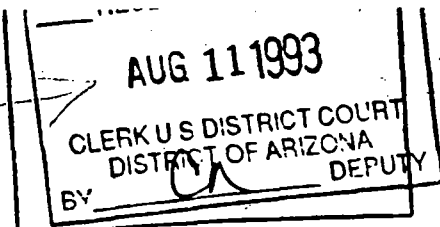


2E 2H
2F 2J
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2ND



INDIAN BEND
WASH NORTH

20. 1ST CD

2D NONE

SFUND RECORDS CTR

2230166

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MOTOROLA INC., SIEMENS CORPORATION,
SALT RIVER VALLEY WATER
USERS' ASSOCIATION, SALT RIVER
PROJECT AGRICULTURAL
IMPROVEMENT & POWER DISTRICT,
SMITHKLINE BEECHAM CORPORATION,
CITY OF SCOTTSDALE, L.D.
HANCOCK, & ELAINE HANCOCK,
THE HIGHSMITH COMPANY,
MICROSEMI CORP--SCOTTSDALE,
P.A.G.E.--LAYHER, and
SCOTTSDALE MEMORIAL HOSPITAL,

Defendants.

No. CIV 92-2314 PHX PGR

ORDER GRANTING MOTION FOR
ENTRY OF CONSENT DECREE

This Court has reviewed the proposed consent decree, the motion and supporting materials for entry of the decree, the comments and the United States' responses thereto, and any other materials submitted with respect to this matter. After consideration, the Court finds that the proposed consent decree is fair, reasonable, and consistent with the purposes of CERCLA.

...

...

15

1 THEREFORE, IT IS HEREBY ORDERED that the United States' Motion
2 for Entry of Consent Decree (Doc. 13) is granted, and the proposed
3 Consent Decree, lodged with this Court on December 11, 1992, is
4 entered as an Order of this Court.

5 DATED this 5th day of Apr., 1993.


6 
7 Hon. Paul G. Rosenblatt
8 United States District Judge

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APPENDIX C - Map of the Site.

APPENDIX D - Attachment II to EPA's Special Notice Letter dated September 30, 1991.

APPENDIX E - List of Supervising Contractors for Settling Defendants.

1 I. BACKGROUND

2
3 A. The United States of America ("United States"), on behalf
4 of the Administrator of the United States Environmental
5 Protection Agency ("EPA"), filed a complaint in this matter
6 pursuant to Sections 106 and 107 of the Comprehensive
7 Environmental Response, Compensation, and Liability Act
8 ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

9 B. The United States in its complaint seeks, inter alia:

10 (1) reimbursement of costs incurred by EPA and the Department of
11 Justice for response actions at the northern portion of the
12 Indian Bend Wash Superfund Site ("NIBW") in Scottsdale and Tempe,
13 Arizona, together with accrued interest; and (2) performance of
14 response actions by the Defendants at the Site consistent with
15 the National Contingency Plan, 40 C.F.R. Part 300 (as amended)
16 ("NCP").

17 C. The Defendants that have entered into this Consent Decree
18 ("Settling Defendants" and "Cash Defendants") do not admit any of
19 the averments in the complaint and do not admit any liability to
20 the Plaintiff or any other person arising out of the transactions
21 or occurrences alleged in the complaint.

22 D. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA
23 placed the Site on the National Priorities List, set forth at 40
24 C.F.R. Part 300, Appendix B, by publication in the Federal
25 Register on September 8, 1983, 48 Fed. Reg. 40658;

26 E. On June 1, 1984, EPA commenced a Remedial Investigation
27 and Feasibility Study ("RI/FS") for the Site in response to a
28

1 release or a substantial threat of a release of hazardous
2 substances at or from the Site, pursuant to 40 C.F.R. § 300.430;

3 F. A previous Consent Decree, Civil Action No. 91-1835, was
4 executed by the United States, the State, the City of Scottsdale,
5 and the Settling Defendants for the Joint Work, and was entered
6 by the Court on April 28, 1992, for the Scottsdale Operable Unit
7 (referred to as the "Scottsdale Operable Unit Consent Decree" or
8 "SOUCD"). Under the SOUCD, the Settling Defendants for the Joint
9 Work will, inter alia, finance the design, construction and

10 operation of a groundwater treatment plant to treat groundwater
11 from the Middle Alluvial Unit ("MAU") and the Lower Alluvial Unit
12 ("LAU") at the NIBW. Upon completion of construction, the
13 treatment plant will be transferred to the City of Scottsdale,
14 which will operate the treatment plant. The SOUCD also requires,
15 inter alia, groundwater monitoring of the MAU and LAU.

16 G. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
17 published notices of the completion of the RI/FS and of the
18 proposed plan for remedial action on April 10 and on April 14,
19 1991, in major local newspapers of general circulation. EPA

20 provided an opportunity for written and oral comments from the
21 public on the proposed plan for remedial action. A copy of the
22 transcript of the public meeting is available to the public as
23 part of the administrative record upon which the Regional
24 Administrator based the selection of the response action.

25 H. The decision by EPA on the remedial action to be
26 implemented at the Site is embodied in a final Record of Decision
27 ("ROD"), executed on September 12, 1991, on which the State has
28 given its concurrence. The ROD includes EPA's explanation for

1 any significant differences between the final plan and the
2 proposed plan as well as a responsiveness summary to the public
3 comments. Notice of the final plan was published in accordance
4 with Section 117(b) of CERCLA.

5 I. Based on the information presently available to EPA, EPA
6 believes that the Joint and Vadose Zone Work will be properly and
7 promptly conducted by the Settling Defendants if conducted in
8 accordance with the requirements of this Consent Decree,
9 including its appendices.

10 J. Solely for the purposes of Section 113(j) of CERCLA, the
11 remedial actions selected by the ROD and the Joint and Vadose
12 Zone Work to be performed by the Settling Defendants shall
13 constitute a response action taken or ordered by the President.

14 K. The Parties recognize, and the Court by entering this
15 Consent Decree finds, that this Consent Decree has been
16 negotiated by the Parties in good faith and implementation of
17 this Consent Decree will expedite the cleanup of the Site and
18 ~~will avoid prolonged and complicated litigation between the~~
19 Parties, and that this Consent Decree is fair, reasonable, and in
20 the public interest.

21 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

22 II. JURISDICTION

23 1. This Court has jurisdiction over the subject matter of
24 this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C.
25 §§ 9606, 9607, and 9613(b). This Court also has personal
26 jurisdiction over the Defendants. Solely for the purposes of
27 this Consent Decree and the underlying complaint, Defendants
28 waive all objections and defenses that they may have to

jurisdiction of the Court or to venue in this District.

Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Defendants and their successors and assigns. Any change in ownership or corporate status of a Defendant including, but not limited to, any transfer of assets

or real or personal property shall in no way alter such Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Joint and/or Vadose Zone Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Joint and/or Vadose Zone Work and shall condition all contracts entered into hereunder upon

~~performance of the Joint and/or Vadose Zone work in conformity~~

with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Joint and/or Vadose Zone Work required by this Consent Decree.

Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Joint and/or Vadose Zone Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship

1 with the appropriate Settling Defendants within the meaning of
2 Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

3 IV. DEFINITIONS

4 4. Unless otherwise expressly provided herein, terms used in
5 this Consent Decree which are defined in CERCLA or in regulations
6 promulgated under CERCLA shall have the meaning assigned to them
7 in CERCLA or in such regulations. Whenever terms listed below
8 are used in this Consent Decree, including the appendices
9 attached hereto and incorporated hereunder, the following
10 definitions shall apply:

11 "Cash Defendants" shall mean, with reference to contributions
12 toward the Settling Defendants' payments of Past and Future
13 Response Costs and obligations pursuant to Sections XXVI (Record
14 Retention), X (Access), and XXI (Stipulated Penalties) of this
15 Consent Decree: L.D. Hancock Company and L.D. Hancock and Elaine
16 Hancock individually; The Highsmith Company, Inc. (for itself,
17 Rolamech Patents, Inc., Handy Company, Inc., Rolamech Company,
18 Rolamech Inc., Rolamech Company, Inc., and W & J Investments)
19 (collectively "Rolamech"); Microsemi Corp.- Scottsdale, an
20 Arizona corporation (for itself and its parent corporation,
21 Microsemi Corporation); P.A.G.E.-Layher; and Scottsdale Memorial
22 Hospital (for itself and Scottsdale Memorial Realty Company).

23 "CERCLA" shall mean the Comprehensive Environmental Response,
24 Compensation, and Liability Act of 1980, as amended, 42 U.S.C.
25 §§ 9601 et seq.

26 "Consent Decree" shall mean this Decree and all appendices
27 attached hereto (listed in Section XXX). In the event of
28

1 conflict between this Decree and any appendix, this Decree shall
2 control.

3 "Day" shall mean a calendar day unless expressly stated to be
4 a working day. "Working day" shall mean a day other than a
5 Saturday, Sunday, or Federal holiday. In computing any period of
6 time under this Consent Decree, where the last day would fall on
7 a Saturday, Sunday, or Federal holiday, the period shall run
8 until the close of business of the next working day.

9 "Defendants" shall mean "Settling Defendants" and "Cash
10 Defendants".

11 "EPA" shall mean the United States Environmental Protection
12 Agency and any successor departments or agencies of the United
13 States.

14 "Future Response Costs" shall mean all costs, including, but
15 not limited to, direct and indirect costs, that the United States
16 incurs in reviewing or developing plans, reports and other items
17 pursuant to this Consent Decree, verifying the Joint and/or

~~18 Vadose Zone Work, or otherwise implementing, overseeing, or~~
19 enforcing this Consent Decree, including, but not limited to,
20 payroll costs, contractor costs, travel costs, laboratory costs,
21 the costs incurred pursuant to Sections VII, VIII, X (including,
22 but not limited to, attorneys fees and the amount of just
23 compensation), XVI, and Paragraph 81 of Section XXII. Future
24 Response Costs shall also include all costs, including direct and
25 indirect costs, paid by the United States in connection with the
26 Site between April 30, 1991 and the effective date of this
27 Consent Decree, except for EPA payroll costs, which shall be
28 calculated from April 20, 1991 to the effective date of this

1 Consent Decree, and except for DOJ costs, which shall be
2 calculated from September 1, 1991 to the effective date of this
3 Consent Decree, and all interest on the Past Response Costs from
4 September 30, 1991, as appropriate to the date of payment of the
5 Past Response Costs.

6 "Joint Remedial Action" shall mean that portion of the Joint
7 Work, except for Operation and Maintenance, to be undertaken by
8 the Settling Defendants to meet Performance Standards in

9 accordance with Appendix B.11 for the UAU groundwater remedy

10 selected in the ROD.

11 "Joint Work" shall mean all activities Settling Defendants are
12 required to perform under this Consent Decree, except those
13 required by Section XXVI (Retention of Records) or pertaining
14 solely to Vadose Zone Work.

15 "National Contingency Plan" or "NCP" shall mean the National
16 Oil and Hazardous Substances Pollution Contingency Plan
17 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
18 ~~codified at 40 C.F.R. Part 300, including, but not limited to,~~
19 any amendments thereto.

20 "Operation and Maintenance" or "O & M" shall mean all
21 activities required to maintain the effectiveness of the Joint
22 Remedial Action as identified by the Operation and Maintenance
23 requirements approved or developed by EPA pursuant to this
24 Consent Decree.

25 "Owner Defendants" shall mean the City of Scottsdale, L.D.
26 Hancock, Motorola Inc., The Highsmith Company, Inc. (on behalf of
27 Rolamech), P.A.G.E.-Layher, Scottsdale Memorial Hospital, and
28 Salt River Project Agricultural Improvement and Power District.

1 "Paragraph" shall mean a portion of this Consent Decree
2 identified by an arabic numeral or an upper case letter.

3 "Parties" shall mean the United States and the Defendants.

4 "Past Response Costs" shall mean all costs, including, but not
5 limited to, direct and indirect costs and interest, that the
6 United States incurred with regard to the Site prior to September
7 1, 1991 for DOJ costs, to April 20, 1991 for EPA payroll costs
8 and to April 30, 1991 for all other costs, except for interest,
9 which shall be calculated from September 30, 1991.

10 "Performance Standards" shall mean those cleanup standards,
11 standards of control, and other substantive requirements,
12 criteria or limitations set forth in Appendix A of the ROD and in
13 the applicable SOW. In particular, the Performance Standards for
14 groundwater shall include, but are not limited to, the chemical
15 specific standards selected in Appendix A of the ROD except for
16 the in situ chemical specific standard for any substance which
17 EPA determines in accordance with § 104(a)(3)(A) of CERCLA is a
18 naturally occurring substance in its unaltered form or altered
19 solely through naturally occurring processes or phenomena, from a
20 location where it is naturally found. Performance Standards
21 shall also mean 1) the significant and continuous reduction of
22 the mass of volatile organic compounds ("VOCs") in the Upper
23 Alluvial Unit ("UAU") due to migration to the MAU and/or the LAU
24 and 2) that VOCs do not migrate to uncontaminated areas in the
25 UAU, MAU, or LAU. The Performance Standards for the vadose zone
26 include, but are not limited to, a demonstration that the mass of
27 all VOCs in the vadose zone for a specific area will not cause
28 VOC concentrations in the groundwater to exceed those chemical-

1 specific standards set forth in Appendix A of the ROD. Such
2 demonstrations shall be made by application of the VLEACH model
3 (or an EPA-approved equivalent) and mixing zone calculations, in
4 accordance with Appendices B.2-3, B.5-B.10. Parameters for the
5 VLEACH model and for the mixing zone calculations shall be
6 subject to approval by EPA.

7 "Plaintiff" shall mean the United States.

8 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42
9 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation
10 and Recovery Act).

11 "Record of Decision" or "ROD" shall mean the EPA Record of
12 Decision relating to the UAU groundwater and vadose zone remedial
13 actions at the Site signed on September 12, 1991, by the Regional
14 Administrator, EPA Region IX.

15 "Remedial Design" shall mean those activities to be undertaken
16 by the Settling Defendants to develop the final plans and
17 specifications for the Joint Remedial Action and Vadose Zone
18 Work, pursuant to Appendices B.2-B.3, B.5-B.11.

19 "Scottsdale Operable Unit Consent Decree" or "SOUCD" shall
20 mean the Consent Decree, Civil Action No. 91-1835-PHX, which was
21 entered in the United States District Court for the District of
22 Arizona on April 28, 1992 and which sets forth, inter alia, the
23 response actions required to implement the remedial action for
24 the MAU and LAU at the Site.

25 "Section" shall mean a portion of this Consent Decree
26 identified by a roman numeral.

27 "Settling Defendants" shall mean: (i) with reference to those
28 provisions of this Consent Decree relating to Joint Work and the

1 reimbursement of Past Response Costs, Motorola Inc., Salt River
2 Project Agricultural Improvement and Power District and Salt
3 River Valley Water Users' Association ("Salt River Project"),
4 Siemens Corporation, and SmithKline Beecham Corporation (on
5 behalf of itself and Beckman Instruments, Inc.); and (ii) with
6 reference to those provisions of this Consent Decree relating to
7 area-specific Vadose Zone Work:

8 Area 5A

Area 5B

9 Siemens Corporation

Salt River Project

10 Area 6

Area 7

11 Siemens Corporation

City of Scottsdale

12 Area 8

Siemens Corporation

13 Siemens Corporation

Area 9

14 Area 11

Salt River Project

15 Motorola Inc.

Area 12

16 Siemens Corporation

Motorola Inc.

17 "Site" or "NIBW" shall mean the northern portion of the Indian
18 Bend Wash Superfund Site, bounded approximately by Chaparral Road
19 to the north, by Scottsdale Road to the west, by Pima Road to the
20 East, and to the south by the southern edges of Sections 11 and
21 12, Township 1 North, Range 4 East, in Scottsdale and Tempe,
22 Maricopa County, Arizona, including the stratigraphic units
23 designated as the UAU, MAU and LAU. The Site is depicted
24 generally on the map attached as Appendix C. Site shall include
25 any area defined as "on-site" in the NCP.

26 "State" shall mean the Arizona Department of Environmental
27 Quality and the Arizona Department of Water Resources.

28

1 "Statements of Work" or "SOWs" shall mean the appropriate
2 statements of work for implementation of Remedial Design, Joint
3 Remedial Action, Vadose Zone Work and Operation and Maintenance
4 at the Site, as set forth in Appendices B.2-B.3, B.5-B.11 to this
5 Consent Decree and any modifications made in accordance with this
6 Consent Decree.

7 "Supervising Contractor(s)" shall mean the principal
8 contractor(s) designated by the Settling Defendants to supervise
9 and direct the implementation of the Joint Work and of the area-
10 specific Vadose Zone Work under this Consent Decree. For
11 purposes of this Consent Decree, "contractor" includes any
12 "person" so designated, as "person" is defined in Section 101(21)
13 of CERCLA.

14 "United States" shall mean the United States of America.

15 "Vadose Zone Work" shall mean all activities to be undertaken
16 by the Settling Defendants in accordance with Appendices B.2-B.3,
17 B.5-B.10, including meeting Performance Standards, for the vadose
18 zone remedies selected in the ROD, and all other activities

19 Settling Defendants are required to perform under this Consent
20 Decree, except those required by Section XXVI (Retention of
21 Records) or pertaining solely to Joint Work.

22 "Waste Material" shall mean (1) any "hazardous substance"
23 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any
24 pollutant or contaminant under Section 101(33), 42 U.S.C.
25 § 9601(33); (3) and any "solid waste" under Section 1004(27) of
26 RCRA, 42 U.S.C. § 6903(27).
27
28

1 V. GENERAL PROVISIONS

2 5. Objectives of the Parties

3 The objectives of the Parties in entering into this Consent
4 Decree are to protect public health or welfare or the environment
5 at the Site by the design and implementation of response actions
6 at the Site by the Settling Defendants and to reimburse response
7 costs of the Plaintiff and to resolve past and future claims
8 against Defendants as set forth in Section XXII (Covenants Not To
9 Sue by Plaintiff).

10 6. Commitments by Defendants

11 a. Cash Defendants, shall make payments to one or more
12 Settling Defendants in contribution to Settling Defendants'
13 payment of Past and Future Response Costs and/or for performance
14 of Joint Work or Vadose Zone Work, and are subject to all
15 provisions and requirements of this Consent Decree which
16 reference Defendants, and to those provisions and requirements
17 which reference Cash Defendants, including Paragraph 26 of
18 Section X (Access); Section XXVI (Retention of Records);

19 ~~Subparagraph 68.e of Section XXI (Stipulated Penalties);~~
20 Subparagraph 50.b of Section XVII (Reimbursement of Response
21 Costs); and Section XXII (Covenant Not to Sue by Plaintiff).

22 b. Settling Defendants shall finance and perform the Joint
23 and Vadose Zone Work and Record Retention provisions of Section
24 XXVI in accordance with this Consent Decree and all plans,
25 standards, specifications, and schedules set forth in or
26 developed and approved by EPA pursuant to this Consent Decree.
27 Settling Defendants shall also reimburse the United States for
28

1 Past Response Costs and Future Response Costs as provided in this
2 Consent Decree.

3 c. The obligations of Settling Defendants to finance and
4 perform the Joint Work, to pay Past and Future Response Costs and
5 to pay any penalties and Future Response Costs related to the
6 Joint Work owed the United States under this Consent Decree are
7 joint and several. The obligations of Settling Defendants to
8 finance and perform the area-specific Vadose Zone Work and to pay
9 any penalties and Future Response Costs related to the specific
10 areas addressed in Appendix B.2-B.3, B.5-B.10 are joint and
11 several for each specific area among the Settling Defendants
12 identified as potentially responsible parties in Appendix D to
13 this Consent Decree. In the event of the insolvency or other
14 failure of any one or more Settling Defendants to implement the
15 requirements of this Consent Decree, the remaining Settling
16 Defendants obligated to meet such requirements under this Consent
17 Decree shall complete all such requirements.

18 7. Compliance With Applicable Law

19 All activities undertaken by Settling Defendants pursuant to
20 this Consent Decree shall be performed in accordance with the
21 requirements of all applicable federal and state laws and
22 regulations. Settling Defendants must also comply with all
23 applicable or relevant and appropriate requirements of all
24 federal and state environmental laws as set forth in the ROD and
25 the SOWs. The activities conducted pursuant to this Consent
26 Decree, if approved by EPA, shall be considered to be consistent
27 with the NCP.
28

1 8. Permits

2 a. As provided in Section 121(e) of CERCLA and §300.400(e)
3 of the NCP, no permit shall be required for any portion of the
4 Joint or Vadose Zone Work conducted entirely on-site. Where any
5 portion of the Joint or Vadose Zone Work requires a federal or
6 state permit or approval, Settling Defendants shall submit timely
7 and complete applications and take all other actions necessary to
8 obtain all such permits or approvals.

9 b. ~~The Settling Defendants may seek relief under the~~
10 ~~provisions of Section XIX (Force Majeure) of this Consent Decree~~
11 ~~for any delay in the performance of the Joint or Vadose Zone Work~~
12 ~~resulting from a failure to obtain, or a delay in obtaining, any~~
13 ~~permit required for such Work.~~

14 c. This Consent Decree is not, and shall not be construed
15 to be, a permit issued pursuant to any federal or state statute
16 or regulation.

17 9. Notice of Obligations to Successors-in-Title

18 a. In the event any Defendant transfers property in the
19 areas addressed in Appendices B.2-B.3, B.5-B.10, or where any
20 groundwater monitoring well is located pursuant to this Consent
21 Decree, prior to issuance of the Certification of Completion of
22 the Joint or Vadose Zone Work for the specific property to be
23 transferred, that Defendant shall (1) assure that the deed, title
24 or other instrument effecting conveyance or transfer of title
25 appends a copy of this Consent Decree, the 1991 ROD and the
26 listing of the site on the NPL; and (2) record an easement on
27 behalf of the United States and its representatives, including,
28 but not limited to, its contractors, for access to the property

1 of the third party. Thereafter, each deed, title, or other
2 instrument conveying an interest in the affected property prior
3 to issuance of the Certification of Completion of the Joint or
4 Vadose Zone Work shall contain a notice that the property is
5 subject to this Consent Decree and any restrictions applicable to
6 the property under this Consent Decree.

7 b. The obligations of each Owner Defendant with respect to
8 the provision of access under Section X (Access) shall be binding
9 upon any and all such Defendants and any and all persons who
10 subsequently acquire any such interest or portion thereof
11 (hereinafter "Successors-in-Title") prior to issuance of the
12 Certification of Completion of the Joint or Vadose Zone Work for
13 the property transferred.

14 c. Prior to EPA's issuance of the Certification of
15 Completion for Joint or Vadose Zone Work, any Owner Defendant
16 and/or any Successor-in-Title shall, at least 60 days prior to
17 the conveyance of any such interest, give written notice of this
18 Consent Decree to the grantee and written notice to EPA of the
19 proposed conveyance, including the name and address of the
20 grantee, and the date on which notice of the Consent Decree was
21 given to the grantee. In the event of any such conveyance,
22 except a conveyance resulting from the exercise of the power of
23 eminent domain, the Defendants' obligations under this Consent
24 Decree, including their obligations to provide or secure access
25 pursuant to Section X (Access), shall continue to be met by the
26 respective Defendants. In addition, if the United States
27 approves, the grantee may perform some or all of the Joint or
28 Vadose Zone Work under this Consent Decree. In no event shall

1 the conveyance of an interest in property that includes, or is a
2 portion of, the Site release or otherwise affect the liability of
3 the Defendants to comply with the Consent Decree.

4 VI. PERFORMANCE OF THE JOINT AND VADOSE ZONE WORK BY SETTling
5 DEFENDANTS

6 10. Selection of Supervising Contractor.

7 a. All aspects of the Joint and Vadose Zone Work to be
8 performed by Settling Defendants pursuant to Sections VI
9 (Performance of the Joint and Vadose Zone Work by Settling
10 Defendants), VII (Additional Response Actions), VIII (EPA

11 Periodic Review), and IX (Quality Assurance, Sampling, and Data
12 Analysis) of this Consent Decree shall be under the direction and
13 supervision of the Supervising Contractor(s), the selection of
14 which shall be subject to disapproval by EPA. Settling
15 Defendants shall select one Supervising Contractor for the Joint
16 Work and one Supervising Contractor for each area of Vadose Zone
17 Work identified in Appendix B.2-B.3, B.5-B.10. Salt River
18 Project shall be the initial Supervising Contractor for the Joint
19 Work. Salt River Project's obligations as Supervising Contractor
20 for Joint Work shall terminate three years after the initiation
21 of periodic sampling of Phase I monitoring wells, as described in
22 Section 3 of Appendix B.11. At least 120 days prior to such
23 termination, the Settling Defendants shall propose a new
24 Supervising Contractor for the Joint Work and the Parties shall
25 proceed as described in subparagraph 10.b below. The Supervising
26 Contractors for the Vadose Zone Work in each area are either
27 listed in Appendix E to this Consent Decree or, within 10 days
28 after the lodging of this Consent Decree, Settling Defendants

1 shall notify EPA in writing of the name, title, and
2 qualifications of any contractor proposed to be the Supervising
3 Contractor. EPA will issue a notice of disapproval or an
4 authorization to proceed.

5 b. If at any time after a Supervising Contractor is
6 designated, Settling Defendants propose to change a Supervising
7 Contractor, Settling Defendants shall give and must obtain an
8 authorization to proceed from EPA, before the new Supervising
9 Contractor performs, directs, or supervises any Joint or Vadose
10 Zone Work under this Consent Decree.

11 c. If EPA disapproves a proposed Supervising Contractor,
12 EPA will notify Settling Defendants in writing. Settling
13 Defendants shall submit to EPA a list of contractors, including
14 the qualifications of each contractor, that would be acceptable
15 to them within 30 days of receipt of EPA's disapproval of the
16 contractor previously proposed. EPA will provide written notice
17 of the names of any contractor(s) that it disapproves and an
18 authorization to proceed with respect to any of the other
19 contractors. Settling Defendants may select any contractor from
20 that list that is not disapproved and shall notify EPA of the
21 name of the contractor selected within 21 days of EPA's
22 authorization to proceed.

23 d. If EPA fails to provide written notice of its
24 authorization to proceed or disapproval as provided in this
25 Paragraph and this failure prevents the Settling Defendants from
26 meeting one or more deadlines in a plan approved by the EPA
27 pursuant to this Consent Decree, Settling Defendants may seek
28

1 relief under the provisions of Section XIX (Force Majeure)
2 hereof.

3 11. Remedial Design/Remedial Action.

4 a. The Settling Defendants shall implement the SOWs set
5 forth in Appendices B.2-B.3, B.5-B.11, which are incorporated
6 into and are enforceable under this Consent Decree. The Settling
7 Defendants shall submit to EPA and the State all plans,
8 submittals and other deliverables required under Appendices B.2-
9 B.3, B.5-B.11 in accordance with the approved schedules for

10 review and approval pursuant to Section XII (Submissions
11 Requiring Agency Approval).

12 b. As identified in the SOWs, the Settling Defendants
13 shall submit to EPA and the State Health and Safety Plans for
14 field activities which conform to the applicable Occupational
15 Safety and Health Administration and EPA requirements including,
16 but not limited to, 29 C.F.R. § 1910.120.

17 12. The Joint and Vadose Zone Work performed by the Settling
18 Defendants pursuant to this Consent Decree shall include the
19 obligation to achieve the Performance Standards. In accordance
20 with the definition of "Performance Standards" under Section IV
21 (Definitions) of this Consent Decree, Settling Defendants may
22 petition EPA if they believe that a substance is naturally
23 occurring in NIBW groundwater within the meaning of
24 § 104(a)(3)(A) of CERCLA. Settling Defendants may so petition
25 EPA no more than one time per year. EPA shall then make a
26 determination whether the substance is naturally occurring in
27 NIBW groundwater within the meaning of § 104(a)(3)(A) of CERCLA.
28 EPA's determination under the preceding sentence shall be subject

1 to the provisions of Paragraph 64 of Section XX (Dispute
2 Resolution) of this Consent Decree.

3 13. Settling Defendants acknowledge and agree that nothing in
4 this Consent Decree, or the SOWs, constitutes a warranty or
5 representation of any kind by Plaintiff that compliance with the
6 work requirements set forth in Appendices B.2-B.3, B.5-B.11 will
7 achieve the Performance Standards. Settling Defendants'
8 compliance with the work requirements shall not foreclose
9 Plaintiff from seeking compliance with all terms and conditions
10 of this Consent Decree, including, but not limited to, the
11 applicable Performance Standards.

12 14. Settling Defendants shall, prior to any off-Site
13 shipment of Waste Material generated in performing the Joint or
14 Vadose Zone Work from the Site to an out-of-state waste
15 management facility, provide written notification to the
16 appropriate state environmental official in the receiving
17 facility's state and to the EPA Project Coordinator of such
18 shipment of Waste Material. However, this notification
19 requirement shall not apply to any off-Site shipments when the
20 total volume of all such shipments will not exceed 10 cubic
21 yards.

22 a. The Settling Defendants shall include in the written
23 notification the following information, where available: (1) the
24 name and location of the facility to which the Waste Material is
25 to be shipped; (2) the type and quantity of the Waste Material to
26 be shipped; (3) the expected schedule for the shipment of the
27 Waste Material; and (4) the method of transportation. The
28 Settling Defendants shall notify the state in which the planned

1 receiving facility is located of major changes in the shipment
2 plan, such as a decision to ship the Waste Material to another
3 facility within the same state, or to a facility in another
4 state.

5 b. The identity of the receiving facility and state will
6 be determined by the Settling Defendants following the award of
7 contracts for Joint or Vadose Zone Work construction, if
8 applicable. The Settling Defendants shall provide the
9 information required by Paragraph 14.a as soon as practicable

10 after the award of the contract and before the Waste Material is
11 actually shipped.

12 VII. ADDITIONAL RESPONSE ACTIONS

13 15. In the event that EPA determines or the Settling
14 Defendants propose that additional response actions are necessary
15 to meet the Performance Standards or to carry out the remedy(ies)
16 selected in the ROD, notification of such additional response
17 actions shall be provided to the Project Coordinator for the
18 other Parties.

19 16. Within 30 days of receipt of notice from EPA or Settling
20 Defendants pursuant to Paragraph 15 that additional response
21 actions are necessary (or such longer time as may be specified by
22 EPA), those Settling Defendants receiving such notice shall
23 submit for approval by EPA a work plan for the additional
24 response actions. The plan shall conform to the applicable
25 requirements of Paragraph 11. Upon approval of the plan pursuant
26 to Section XII (Submissions Requiring Agency Approval), Settling
27 Defendants shall implement the plan for additional response
28 actions in accordance with the schedule contained therein.

1 17. Any additional response actions that Settling Defendants
2 propose are necessary to meet the Performance Standards or to
3 carry out the remedy(ies) selected in the ROD shall be subject to
4 approval by EPA and, if authorized by EPA, shall be completed by
5 Settling Defendants in accordance with plans, specifications, and
6 schedules approved or established by EPA pursuant to Section XII
7 (Submissions Requiring Agency Approval).

8 18. Settling Defendants may invoke the procedures set forth
9 in Section XX (Dispute Resolution) to dispute EPA's determination
10 that additional response actions are necessary to meet the
11 Performance Standards or to carry out the remedy(ies) selected in
12 the ROD. Such a dispute shall be resolved pursuant to Paragraphs
13 61-64 of this Consent Decree.

14 VIII. EPA PERIODIC REVIEW

15 19. Settling Defendants shall conduct any studies and
16 investigations as requested by EPA in order to permit EPA to
17 conduct reviews at least every five years as required by Section
18 121(c) of CERCLA and any applicable regulations.

19 20. If required by Sections 113(k)(2) or 117 of CERCLA,
20 Settling Defendants and the public will be provided with an
21 opportunity to comment on any further response actions proposed
22 by EPA as a result of the review conducted pursuant to Section
23 121(c) of CERCLA and to submit written comments for the record
24 during the public comment period. After the period for
25 submission of written comments is closed, the Regional
26 Administrator, EPA Region 9, or his/her delegate will determine
27 in writing whether further response actions are appropriate.
28

1 21. If the Regional Administrator, EPA Region 9, or his/her
2 delegate determines that information received, in whole or in
3 part, during the review conducted pursuant to Section 121(c) of
4 CERCLA, indicates that the Joint Remedial Action or Vadose Zone
5 Work is not protective of human health and the environment, the
6 Settling Defendants shall undertake any further response actions
7 EPA has determined are appropriate, unless their liability for
8 such further response actions is barred by the Covenant Not to
9 Sue set forth in Section XXII. Settling Defendants for the Joint

10 Remedial Action or area-specific Vadose Zone Work, as
11 appropriate, shall submit a plan for such work to EPA for
12 approval in accordance with the procedures set forth in Section
13 VI (Performance of the Joint and Vadose Zone Work by Settling
14 Defendants) and shall implement the plan approved by EPA. The
15 appropriate Settling Defendants may invoke the procedures set
16 forth in Section XX (Dispute Resolution) to dispute (1) EPA's
17 determination that the remedial action is not protective of human
18 health and the environment, (2) EPA's selection of the further
19 response actions ordered as arbitrary and capricious or otherwise
20 not in accordance with law, or (3) EPA's determination that the
21 Settling Defendants' liability for the further response actions
22 requested is reserved in Paragraphs 78, 79, or 81 or otherwise
23 not barred by the Covenant Not to Sue set forth in Section XXII.

24 IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

25 22. Settling Defendants shall use quality assurance, quality
26 control, and chain of custody procedures for all design,
27 compliance and monitoring samples in accordance with EPA's
28 "Interim Guidelines and Specifications For Preparing Quality

1 Assurance Project Plans," December 1980, (QAMS-005/80); "Data
2 Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC
3 Policies and Procedures Manual," May 1978, revised August 1991,
4 (EPA 330/9-78-001-R); and subsequent amendments to such
5 guidelines upon notification by EPA to Settling Defendants of
6 such amendment. Amended guidelines shall apply only to
7 procedures conducted after such notification. Prior to the
8 commencement of any monitoring project under this Consent Decree,
9 ~~Settling Defendants shall submit to EPA for approval a Quality~~
10 Assurance Project Plan ("QAPP") to EPA and the State that is
11 consistent with the SOW, the NCP, and U.S. EPA Region 9 "Guidance
12 for Preparing Quality Assurance Project Plans for Superfund
13 Remedial Projects" (September, 1989). The Settling Defendants
14 have previously developed and submitted to EPA a QAPP for
15 monitoring of the MAU and LAU under the SOUCD which has been
16 approved by EPA. To the extent that EPA determines that the QAPP
17 developed under the SOUCD is applicable, those portions of the
18 ~~QAPP shall be used for monitoring activities under this Consent~~
19 Decree. If relevant to the proceeding, the Parties agree that
20 validated sampling data generated in accordance with the QAPP(s)
21 and reviewed and approved by EPA shall be admissible as evidence,
22 without objection, in any proceeding under this Decree. Settling
23 Defendants shall ensure that EPA and State personnel and their
24 authorized representatives are allowed access at reasonable times
25 to all laboratories utilized by Settling Defendants in
26 implementing this Consent Decree. In addition, Settling
27 Defendants shall ensure that such laboratories shall analyze all
28 samples submitted by EPA pursuant to the QAPP for quality

1 assurance monitoring. Settling Defendants shall ensure that the
2 laboratories they utilize for the analysis of samples taken
3 pursuant to this Decree perform all analyses according to
4 accepted EPA methods. Accepted EPA methods include, but are not
5 limited to, those methods which are documented in the "Contract
6 Lab Program Statement of Work for Inorganic Analysis Multimedia,
7 Multiconcentration, Document #ILM 02.0" and the "Contract Lab
8 Program Statement of Work for Organic Analysis, Multimedia,
9 Multiconcentration, Document #OLM 01.0", and any amendments or
10 revisions made thereto during the course of the implementation of
11 this Decree. Settling Defendants shall ensure that all
12 laboratories they use for analysis of samples taken pursuant to
13 this Consent Decree participate in an EPA or EPA-equivalent QA/QC
14 program.

15 23. Upon request, the Settling Defendants shall allow split
16 or duplicate samples to be taken by EPA and the State or their
17 authorized representatives. Settling Defendants shall notify EPA
18 and the State not less than 14 days in advance of any sample
19 collection activity unless shorter notice is agreed to by EPA.
20 In addition, EPA and the State shall have the right to take any
21 additional samples that EPA deems necessary. Upon request, EPA
22 and the State shall allow the Settling Defendants to take split
23 or duplicate samples of any samples they take as part of EPA's
24 oversight of the Settling Defendants' implementation of the Joint
25 or Vadose Zone Work.

26 24. Settling Defendants shall submit to EPA and the State
27 three copies of the results of all sampling and/or tests or other
28 data obtained or generated by or on behalf of Settling Defendants

1 with respect to the Site and/or the implementation of this
2 Consent Decree unless EPA agrees otherwise.

3 25. Notwithstanding any provision of this Consent Decree, the
4 United States hereby retains all of its information gathering and
5 inspection authorities and rights, including enforcement actions
6 related thereto, under CERCLA, RCRA and any other applicable
7 statutes or regulations.

8 X. ACCESS

9 26. a. Commencing upon the date of lodging of this Consent
10 Decree, the Defendants agree to provide the United States, the
11 State, and their representatives, including EPA and its
12 contractors, access at all reasonable times to the Site and any
13 other property to which access is required for the implementation
14 of this Consent Decree, to the extent access to the property is
15 controlled by Defendants, for the purposes of conducting any
16 activity related to this Consent Decree including, but not
17 limited to:

- 18 i. Monitoring the Joint and/or Vadose Zone Work;
19 ii. Verifying any data or information submitted to the
20 United States;
21 iii. Conducting investigations relating to contamination
22 at or near the Site;
23 iv. Obtaining samples;
24 v. Assessing the need for, planning, or implementing
25 additional response actions at or near the Site;
26 vi. Inspecting and copying records, operating logs,
27 contracts, or other documents maintained or generated by Settling
28 Defendants or their agents, consistent with Section XXV; and

vii. Assessing Settling Defendants' compliance with this Consent Decree.

With respect to Settling Defendant the City of Scottsdale, the requirements of this Section shall apply only to Area 7.

b. Cash Defendants shall provide to Settling Defendants access at all reasonable times to the Site and any other property to which access is required for the purposes of conducting any activity necessary for the implementation of this Consent Decree including, but not limited to, the activities identified in

subparagraphs (i)-(vii) of subparagraph 26.a. Such access shall be coordinated with Cash Defendants in order to minimize interference with ongoing activities on the property. Cash Defendants shall not be entitled to compensation for providing access needed to implement the Consent Decree.

27. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling

~~Defendants, Settling Defendants shall use best efforts to secure~~

from such persons access for Settling Defendants, as well as for the United States and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Joint or Vadose Zone Work is not obtained within 45 days of the effective date of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling

1 Defendants shall promptly notify the United States, and shall
2 include in that notification a summary of the steps Settling
3 Defendants have taken to attempt to obtain access. The United
4 States or the State may, as it deems appropriate, assist Settling
5 Defendants in obtaining access. Settling Defendants shall
6 reimburse the United States, in accordance with the procedures in
7 Section XVII (Reimbursement of Response Costs), for all costs
8 incurred by the United States in obtaining access.

9 28. Notwithstanding any provision of this Consent Decree, the
10 United States retains all of its access authorities and rights,
11 including enforcement authorities related thereto, under CERCLA,
12 RCRA and any other applicable statute or regulations.

13 XI. REPORTING REQUIREMENTS

14 29. a. Joint Work. In addition to reporting requirements in
15 the SOWs and any other requirement of this Consent Decree, during
16 construction of monitoring wells Settling Defendants shall submit
17 to EPA and the State three (3) copies of written monthly progress
18 reports that: (1) describe the actions that have been taken
19 toward achieving compliance with this Consent Decree during the
20 previous month; (2) include a summary of all results of sampling
21 and tests and all other data received or generated by Settling
22 Defendants or their contractors or agents in the previous month;
23 (3) identify all plans and other deliverables required by this
24 Consent Decree completed and submitted during the previous month;
25 (4) describe all actions, including, but not limited to, data
26 collection and implementation of the SOW, which are scheduled for
27 the next six weeks and provide other information relating to the
28 progress of construction; (5) include information regarding

percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Joint Work, and a description of efforts made to mitigate those delays or anticipated delays; (6) include any modifications to the SOW or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (7) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 47.b of Section XV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA and the State to discuss the progress of the Joint Work. After construction of monitoring wells has been completed, no further monthly progress reports for Joint Work are required.

~~b. Area-specific Vadose Zone Work.~~ In addition to reporting requirements in the SOWs and any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State three (3) copies of written monthly progress reports that: (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (2) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (3) identify all plans and other deliverables required by this Consent Decree completed and submitted during the previous month;

1 (4) describe all actions, including, but not limited to, data
2 collection and implementation of the SOW, which are scheduled for
3 the next six weeks and provide other information relating to the
4 progress of construction; (5) include information regarding
5 percentage of completion, unresolved delays encountered or
6 anticipated that may affect the future schedule for
7 implementation of the Vadose Zone Work, and a description of
8 efforts made to mitigate those delays or anticipated delays; (6)
9 include any modifications to the SOW or other schedules that

10 Settling Defendants have proposed to EPA or that have been
11 approved by EPA; and (7) describe all activities undertaken in
12 support of the Community Relations Plan during the previous month
13 and those to be undertaken in the next six weeks. Settling
14 Defendants shall submit these progress reports to EPA and the
15 State by the tenth day of every month following the lodging of
16 this Consent Decree until EPA notifies the Settling Defendants
17 pursuant to Paragraph 46.b of Section XV (Certification of
18 Completion). If requested by EPA, Settling Defendants shall also
19 provide briefings for EPA and the State to discuss the progress
20 of the Vadose Zone Work. After EPA issues its Certificate of
21 Completion for Vadose Zone Work for specific vadose zone areas,
22 no further monthly progress reports are required for such areas.

23 30. The Settling Defendants shall notify EPA of any change in
24 the schedule described in the monthly progress report for the
25 performance of any activity, including, but not limited to, data
26 collection and implementation of the SOW, no later than seven
27 days prior to the performance of the activity.
28

1 31. Upon the occurrence of any event during performance of
2 the Joint or Vadose Zone Work that Settling Defendants are
3 required to report pursuant to Section 103 of CERCLA or Section
4 304 of the Emergency Planning and Community Right-to-know Act
5 (EPCRA), Settling Defendants shall within 24 hours of the onset
6 of such event orally notify the EPA Project Coordinator or the
7 Alternate EPA Project Coordinator (in the event of the
8 unavailability of the EPA Project Coordinator), or, in the event
9 that neither the EPA Project Coordinator or Alternate EPA Project
10 Coordinator is available, the Emergency Response Section, Region
11 9, United States Environmental Protection Agency. These
12 reporting requirements are in addition to the reporting required
13 by CERCLA Section 103 or EPCRA Section 304.

14 32. Within 20 days of the onset of such an event, Settling
15 Defendants shall furnish to Plaintiffs a written report, signed
16 by the Settling Defendants' Project Coordinator, setting forth
17 the events which occurred and the measures taken, and to be
18 taken, in response thereto. Within 30 days of the conclusion of
19 such an event, Settling Defendants shall submit a report setting
20 forth all actions taken in response thereto.

21 33. Settling Defendants shall submit to EPA three (3) copies
22 of all plans, reports, and data required by Appendices B.2-B.3,
23 B.5-B.11 in accordance with the schedules set forth in such
24 appendices. Settling Defendants shall simultaneously submit
25 three copies of all such plans, reports and data to the State.

26 34. All reports and other documents submitted by Settling
27 Defendants to EPA (other than the monthly progress reports
28 referred to above) which purport to document Settling Defendants'

1 compliance with the terms of this Consent Decree shall be signed
2 by an authorized representative of the Settling Defendants.

3 35. Upon the request of any Party, the Party receiving the
4 request shall make available to the requesting Party(ies) the
5 results of sampling and/or tests or other data generated under
6 this Consent Decree by such Party, or by individuals or entities
7 acting on their behalf.

8 XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

9 36. After review of any plan, report or other item which is
10 required to be submitted for approval pursuant to this Consent

11 Decree, EPA shall: (a) approve, in whole or in part, the
12 submission; (b) approve the submission upon specified conditions;
13 (c) modify the submission to cure the deficiencies; (d)
14 disapprove, in whole or in part, the submission, directing that
15 the Settling Defendants modify the submission; or (e) any
16 combination of the above.

17 37. In the event of approval, approval upon conditions, or
18 modification by EPA, pursuant to Paragraph 36(a), (b), or (c),
19 ~~Settling Defendants shall proceed to take any action required by~~
20 the plan, report, or other item, as approved or modified by EPA
21 subject only to their right to invoke the Dispute Resolution
22 procedures set forth in Section XX (Dispute Resolution) with
23 respect to the modifications or conditions made by EPA. In the
24 event that EPA modifies the submission to cure the deficiencies
25 pursuant to Paragraph 36(c) and the submission has a material
26 defect, EPA retains its right to seek stipulated penalties, as
27 provided in Section XXI.

1 38. a. Upon receipt of a notice of disapproval pursuant to
2 Paragraph 36(d), Settling Defendants shall, within 21 days or
3 such other time as specified by EPA in such notice, correct the
4 deficiencies and resubmit the plan, report, or other item for
5 approval. Any stipulated penalties applicable to the submission,
6 as provided in Section XXI, shall accrue during the 21-day period
7 or otherwise specified period but shall not be payable unless the
8 resubmission is disapproved or modified due to a material defect
9 as provided in Paragraph 39.

10 b. Notwithstanding the receipt of a notice of disapproval
11 pursuant to Paragraph 36(d), Settling Defendants shall proceed,
12 at the direction of EPA, to take any action required by any non-
13 deficient portion of the submission. Implementation of any non-
14 deficient portion of a submission shall not relieve Settling
15 Defendants of any liability for stipulated penalties under
16 Section XXI (Stipulated Penalties).

17 39. In the event that a resubmitted plan, report or other
18 item, or portion thereof, is disapproved by EPA, EPA may again
19 ~~require the Settling Defendants to correct the deficiencies, in~~
20 accordance with the preceding Paragraphs. EPA also retains the
21 right to amend or develop the plan, report or other item.
22 Settling Defendants shall implement any such plan, report, or
23 item as amended or developed by EPA, subject only to their right
24 to invoke the procedures set forth in Section XX (Dispute
25 Resolution).

26 40. If upon resubmission, a plan, report, or item is
27 disapproved or modified by EPA due to a material defect, Settling
28 Defendants shall be deemed to have failed to submit such plan,

1 report, or item timely and adequately unless the Settling
2 Defendants invoke the dispute resolution procedures set forth in
3 Section XX (Dispute Resolution) and EPA's action is overturned
4 pursuant to that Section. The provisions of Section XX (Dispute
5 Resolution) and Section XXI (Stipulated Penalties) shall govern
6 the implementation of the Joint and Vadose Zone Work and accrual
7 and payment of any stipulated penalties during Dispute
8 Resolution. If EPA's disapproval or modification is upheld,
9 stipulated penalties shall accrue for such violation from the
10 date on which the initial submission was originally required, as
11 provided in Section XXI.

12 41. All plans, reports, and other items required to be
13 submitted to EPA under this Consent Decree shall, upon approval
14 or modification by EPA, be enforceable under this Consent Decree.
15 In the event EPA approves or modifies a portion of a plan,
16 report, or other item required to be submitted to EPA under this
17 Consent Decree, the approved or modified portion shall be
18 enforceable under this Consent Decree.

19 XIII. PROJECT COORDINATORS

20 42. Within 20 days of lodging this Consent Decree, Settling
21 Defendants and EPA will notify each other, in writing, of the
22 name, address and telephone number of their respective designated
23 Project Coordinators and Alternate Project Coordinators. Settling
24 Defendants shall identify one Project Coordinator and Alternate
25 Project Coordinator for the Joint Work and one Project
26 Coordinator and Alternate Project Coordinator for each separate
27 area-specific Vadose Zone Work. If a Project Coordinator or
28 Alternate Project Coordinator initially designated is changed,

1 the identity of the successor will be given to the other parties
2 at least 5 working days before the changes occur, unless
3 impracticable, but in no event later than the actual day the
4 change is made. The Settling Defendants' Project Coordinator
5 shall be subject to disapproval by EPA and shall have the
6 technical expertise sufficient to adequately oversee all aspects
7 of the Joint and/or Vadoso Zone Work. The Settling Defendants'
8 Project Coordinator shall not be an attorney who is representing
9 any of the Settling Defendants as an attorney in this matter. He
10 or she may assign other representatives, including other
11 contractors, to serve as a Site representative for oversight of
12 performance of daily operations during remedial activities.

13 43. EPA may designate other representatives, including, but
14 not limited to, EPA employees, and federal contractors and
15 consultants, to observe and monitor the progress of any activity
16 undertaken pursuant to this Consent Decree. EPA's Project
17 Coordinator and Alternate Project Coordinator shall have the
18 authority lawfully vested in a Remedial Project Manager (RPM) and
19 an On-Scene Coordinator (OSC) by the National Contingency Plan,
20 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or
21 Alternate Project Coordinator shall have authority, consistent
22 with the National Contingency Plan, to halt any Joint or Vadoso
23 Zone Work required by this Consent Decree and to take any
24 necessary response action when s/he determines that conditions at
25 the Site constitute an emergency situation or may present an
26 immediate threat to public health or welfare or the environment
27 due to release or threatened release of Waste Material.
28

1 XIV. ASSURANCE OF ABILITY TO COMPLETE JOINT OR VADOSE ZONE

2 WORK

3 44. Within 30 days of entry of this Consent Decree, Settling
4 Defendants shall establish and maintain financial security in the
5 amount of four million dollars (\$4,000,000.00) for the Joint Work
6 and in the following amounts for each area-specific Vadose Zone
7 Work: (1) three hundred thousand dollars (\$300,000.00) for Area
8 5A; (2) two hundred fifty thousand dollars (\$250,000.00) for Area
9 5B; (3) four hundred thousand dollars (\$400,000.00) for Area 6;
10 (4) six hundred fifty thousand dollars (\$650,000.00) for Area 7;
11 (5) four hundred thousand dollars (\$400,000.00) for Area 8; (6)
12 two hundred fifty thousand dollars (\$250,000.00) for Area 9; (7)
13 three hundred thousand dollars (\$300,000.00) for Area 11; and (8)
14 one million dollars (\$1,000,000.00) for Area 12. One or more of
15 the Settling Defendants shall establish and maintain such
16 financial security for the Joint and area-specific Vadose Zone
17 Work in one of the following forms:

18 (a) A surety bond guaranteeing performance of the Joint
19 and/or Vadose Zone Work;

20 (b) One or more irrevocable letters of credit equalling the
21 total estimated cost of the Joint and/or Vadose Zone Work;

22 (c) A trust fund;

23 (d) A guarantee to perform the Joint and/or Vadose Zone
24 Work by one or more parent corporations or subsidiaries, or by
25 one or more unrelated corporations that have a substantial
26 business relationship with at least one of the Settling
27 Defendants; or
28

1 (e) A demonstration that one or more of the Settling
2 Defendants satisfy the requirements of 40 C.F.R. § 264.143(f).
3 For purposes of compliance with this provision, Siemens
4 Corporation shall be deemed to satisfy 40 C.F.R.
5 § 264.143(f)(1)(ii)(A) based on a showing that Siemens has issued
6 commercial paper with current ratings that are equivalent to, or
7 above, the bond ratings identified in that subsection.

8 45. If the Settling Defendants seek to demonstrate the
9 ability to complete the Joint and/or Vadose Zone Work through a
10 guarantee by a third party pursuant to Paragraph 44(d) of this
11 Consent Decree, Settling Defendants shall demonstrate that the
12 guarantor satisfies the requirements of 40 C.F.R. § 264.143(f).
13 If Settling Defendants seek to demonstrate their ability to
14 complete the Joint and/or Vadose Zone Work by means of the
15 financial test or the corporate guarantee pursuant to Paragraph
16 44(d) or (e), they shall resubmit sworn statements conveying the
17 information required by 40 C.F.R. § 264.143(f) annually, on the
18 anniversary of the effective date of this Consent Decree. In the
19 event that EPA determines at any time that the financial
20 assurances provided pursuant to this Section are inadequate,
21 Settling Defendants shall, within 30 days of receipt of notice of
22 EPA's determination, obtain and present to EPA for approval one
23 of the other forms of financial assurance listed in Paragraph 44
24 of this Consent Decree. Settling Defendants' inability to
25 demonstrate financial ability to complete the Joint or Vadose
26 Zone Work shall not excuse performance of any activities required
27 under this Consent Decree.
28

XV. CERTIFICATION OF COMPLETION

46. Completion of the Joint Remedial Action and Vadose Zone Work

a. Within 90 days after Settling Defendants conclude that the Joint Remedial Action has been fully performed and the Performance Standards have been attained in accordance with Appendix B.11 or within 90 days after each individual or group of Settling Defendants obligated to conduct area-specific Vadose Zone Work concludes that Vadose Zone Work (including operation and maintenance) for such specific area has been fully performed and the Performance Standards have been attained in accordance with Appendices B.2-B.3, B.5-B.10, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA and, at EPA's option, the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Joint Remedial Action or Vadose Zone Work has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer or geologist, as appropriate, and the Settling Defendants' Project Coordinator shall state that the Joint Remedial Action or Vadose Zone Work has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer or geologist, as appropriate, if not previously provided to EPA. The report shall contain the

1 following statement, signed by a responsible corporate official
2 of a Settling Defendant or the Settling Defendants' Project
3 Coordinator:

4 "To the best of my knowledge, after thorough investigation,
5 I certify that the information contained in or accompanying
6 this submission is true, accurate and complete. I am aware
7 that there are significant penalties for submitting false
8 information, including the possibility of fine and
9 imprisonment for knowing violations."

10 If, after completion of the pre-certification inspection and
11 receipt and review of the written report, EPA determines that the
12 Joint Remedial Action or Vadose Zone Work or any portion thereof
13 has not been completed in accordance with this Consent Decree or
14 that the Performance Standards have not been achieved, EPA will
15 notify Settling Defendants in writing of the activities that must
16 be undertaken to complete the Joint Remedial Action or Vadose
17 Zone Work and achieve the Performance Standards. EPA will set
18 forth in the notice a schedule for performance of such activities
19 consistent with the Consent Decree and the SOW or require the
20 Settling Defendants to submit a schedule to EPA for approval
21 pursuant to Section XII (Submissions Requiring Agency Approval).

22 Settling Defendants shall perform all activities described in the
23 notice in accordance with the specifications and schedules
24 established pursuant to this Paragraph, subject to their right to
25 invoke the dispute resolution procedures set forth in Section XX
26 (Dispute Resolution).

27 b. If EPA concludes, based on the initial or any
28 subsequent report requesting Certification of Completion that the
Joint Remedial Action or all phases of Vadose Zone Work for a
specific area have been fully performed in accordance with this

1 Consent Decree and that the Performance Standards have been
2 achieved, EPA will so certify in writing to the appropriate
3 Settling and Cash Defendants. This certification shall
4 constitute the Certification of Completion of the Joint Remedial
5 Action or area-specific Vadose Zone Work for purposes of this
6 Consent Decree, including, but not limited to, Section XXII
7 (Covenants Not to Sue by Plaintiff). Certification of Completion
8 of the Vadose Zone Work shall not affect Settling Defendants'
9 obligations (other than those that pertain solely to Vadose Zone
10 Work) under this Consent Decree. Certification of Completion of
11 the Joint Remedial Action shall not affect Settling Defendants'
12 obligations (other than those that pertain solely to the Joint
13 Remedial Action) under this Consent Decree.

14 c. The requirements of this Paragraph 46 apply separately
15 to the Joint Remedial Action and to area-specific Vadose Zone
16 Work identified in Appendix B.2-B.3, B.5-B.10.

17 47. Completion of the Joint Work

18 a. Within 90 days after Settling Defendants conclude that
19 all phases of the Joint Work (including O & M) have been fully
20 performed under this Consent Decree, including Appendix B.11,
21 Settling Defendants shall schedule and conduct a pre-
22 certification inspection to be attended by Settling Defendants,
23 EPA and, at EPA's option, the State. If, after the pre-
24 certification inspection, the Settling Defendants still believe
25 that the Joint Work has been fully performed, Settling Defendants
26 shall submit a written report by a registered professional
27 engineer or geologist, as appropriate, stating that the Joint
28 Work has been completed in full satisfaction of the requirements

1 of this Consent Decree. The report shall contain the following
2 statement, signed by a responsible corporate official of a
3 Settling Defendant or the Settling Defendants' Project
4 Coordinator:

5 "To the best of my knowledge, after thorough investigation,
6 I certify that the information contained in or accompanying
7 this submission is true, accurate and complete. I am aware
8 that there are significant penalties for submitting false
information, including the possibility of fine and
imprisonment for knowing violations."

9 If, after review of the written report, EPA determines that any
10 portion of the Joint Work has not been completed in accordance
11 with this Consent Decree, EPA will notify Settling Defendants in
12 writing of the activities that must be undertaken to complete the
13 Joint Work. EPA will set forth in the notice a schedule for
14 performance of such activities consistent with the Consent Decree
15 and the SOW or require the Settling Defendants to submit a
16 schedule to EPA for approval pursuant to Section XII (Submissions
17 Requiring Agency Approval). Settling Defendants shall perform
18 all activities described in the notice in accordance with the
19 specifications and schedules established therein, subject to
20 their right to invoke the dispute resolution procedures set forth
21 in Section XX (Dispute Resolution).

22 b. If EPA concludes, based on the initial or any
23 subsequent request for Certification of Completion by Settling
24 Defendants that the Joint Work has been fully performed in
25 accordance with this Consent Decree, EPA will so notify the
26 Settling and Cash Defendants in writing.

XVI. EMERGENCY RESPONSE

48. In the event of any action or occurrence during the performance of the Joint or Vadose Zone Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 49, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Section, Region 9. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

49. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an

1 actual or threatened release of Waste Material on, at, or from
2 the Site.

3 XVII. REIMBURSEMENT OF RESPONSE COSTS

4 50. a. Within 30 days of the effective date of this Consent
5 Decree, Settling Defendants shall pay to the United States
6 \$5,066,048.44, in reimbursement of Past Response Costs, by
7 Electronic Funds Transfer ("EFT" or wire transfer) to the U.S.
8 Department of Justice lockbox bank, referencing CERCLA Site
9 Number 9T20, DOJ Case Number 90-11-2-413B, and the U.S.A.O. file
10 number 9204626. Payment shall be made in accordance with
11 instructions provided by the Plaintiff to the Settling Defendants
12 upon execution of the Consent Decree. Any EFTs received at the
13 U.S. D.O.J. lockbox after 11:00 A.M. (Eastern Time) will be
14 credited on the next business day. Upon payment by EFT, Settling
15 Defendants shall notify EPA and DOJ in writing and by telefax, as
16 specified in Section XXVII (Notices and Submissions).

17 b. Each Cash Defendant has made a cash payment to one or
18 ~~more Settling Defendants in contribution toward the Settling~~
19 Defendants' payment of Past and Future Response Costs and or for
20 performance of Joint Work or Vadose Zone Work.

21 51. Settling Defendants shall reimburse the United States for
22 all Future Response Costs not inconsistent with the National
23 Contingency Plan incurred by the United States. On an annual
24 basis, the United States will send Settling Defendants a bill
25 requiring payment that consists of a summary of costs incurred by
26 the Department of Justice and a copy of EPA's Cost Documentation
27 Management System ("CDMS") report, which includes direct and
28 indirect costs incurred by EPA and its contractors. The

1 documentation provided by the United States shall include
2 separate accounting for Joint Work and each area of Vadose Zone
3 Work. In accordance with the requirements set forth in Paragraph
4 6 of this Consent Decree, Settling Defendants shall make all
5 payments within 30 days of Settling Defendants' receipt of each
6 bill requiring payment, except as provided in Paragraph 52. The
7 Settling Defendants shall make all payments required by this
8 Paragraph in the form of a certified check or checks made payable
9 to "EPA Hazardous Substance Superfund" and referencing the CERCLA
10 Site Number provided by EPA and DOJ Case Number 90-11-2-413B.
11 The Settling Defendants shall forward the certified check or
12 checks to U.S. Environmental Protection Agency, Region 9,
13 Superfund Accounting, P.O. Box 360863M, Pittsburgh, PA 15251,
14 and shall send copies of the check to the United States as
15 specified in Section XXVII (Notices and Submissions).

16 52. Settling Defendants may contest payment of any Future
17 Response Costs under Paragraph 51 if they determine that the
18 United States has made an accounting error or if they allege that
19 a cost item that is included represents costs that are
20 inconsistent with the NCP. Such objection shall be made in
21 writing within 30 days of receipt of the bill and must be sent to
22 the United States, pursuant to Section XXVII (Notices and
23 Submissions). Any such objection shall specifically identify the
24 contested Future Response Costs and the basis for objection. In
25 the event of an objection, the Settling Defendants shall within
26 the 30 day period pay all uncontested Future Response Costs to
27 the United States in the manner described in Paragraph 50.
28 Simultaneously, the Settling Defendants shall establish an

1 interest bearing escrow account in a federally-insured bank duly
2 chartered in the State of Arizona and remit to that escrow
3 account funds equivalent to the amount of the contested Future
4 Response Costs. The Settling Defendants shall send to the United
5 States, as provided in Section XXVII (Notices and Submissions), a
6 copy of the transmittal letter and check paying the uncontested
7 Future Response Costs, and a copy of the correspondence that
8 establishes and funds the escrow account, including, but not
9 limited to, information containing the identity of the bank and
10 bank account under which the escrow account is established as
11 well as a bank statement showing the initial balance of the
12 escrow account. Simultaneously with establishment of the escrow
13 account, the Settling Defendants shall initiate the Dispute
14 Resolution procedures in Section XX (Dispute Resolution). If the
15 United States prevails in the dispute, within 5 days of the
16 resolution of the dispute, the Settling Defendants shall pay the
17 sums due (with accrued interest) to the United States in the
18 manner described in Paragraph 51. If the Settling Defendants
19 prevail concerning any aspect of the contested costs, the
20 Settling Defendants shall pay that portion of the costs (plus
21 associated accrued interest) for which they did not prevail to
22 the United States in the manner described in Paragraph 51;
23 Settling Defendants shall be disbursed any balance of the escrow
24 account. The dispute resolution procedures set forth in this
25 Paragraph in conjunction with the procedures set forth in Section
26 XX (Dispute Resolution) shall be the exclusive mechanisms for
27 resolving disputes regarding the Settling Defendants' obligation
28 to reimburse the United States its Future Response Costs.

53. In the event that the payments required by Paragraph 50 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 51 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue on the date of the Settling Defendants' receipt of the bill. Interest shall accrue at the rate specified through the date of the Settling Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section.

XVIII. INDEMNIFICATION AND INSURANCE

54. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities

1 pursuant to this Consent Decree, including, but not limited to,
2 any claims arising from any designation of Settling Defendants as
3 EPA's authorized representatives under Section 104(e) of CERCLA.
4 Further, the Settling Defendants agree to pay the United States
5 all costs they incur including, but not limited to, attorneys
6 fees and other expenses of litigation and settlement arising
7 from, or on account of, claims made against the United States
8 based on acts or omissions of Settling Defendants, their
9 officers, directors, employees, agents, contractors,
10 subcontractors, and any persons acting on their behalf or under
11 their control, in carrying out activities pursuant to this
12 Consent Decree. The United States shall not be held out as a
13 party to any contract entered into by or on behalf of Settling
14 Defendants in carrying out activities pursuant to this Consent
15 Decree. Neither the Settling Defendants nor any such contractor
16 shall be considered an agent of the United States.

17 b. Any Settling Defendant who undertakes area-specific
18 Vadose Zone Work on property owned by a Cash Defendant shall
19 indemnify, defend, save and hold harmless that Cash Defendant
20 from any and all claims, liabilities or causes of action arising
21 from, or on account of, acts or omissions of such Settling
22 Defendant, its officers, directors, employees, agents,
23 contractors, subcontractors, and any persons acting on its behalf
24 or under its control, arising out of the performance of Vadose
25 Zone Work pursuant to this Consent Decree.

26 55. Settling Defendants waive all claims against the United
27 States for damages or reimbursement or for set-off of any
28 payments made or to be made to the United States, arising from or

1 on account of any contract, agreement, or arrangement between any
2 one or more of Settling Defendants and any person for performance
3 of Joint or Vadose Zone Work on or relating to the Site,
4 including, but not limited to, claims on account of construction
5 delays. In addition, Settling Defendants shall indemnify and
6 hold harmless the United States with respect to any and all
7 claims for damages or reimbursement arising from or on account of
8 any contract, agreement, or arrangement between any one or more
9 of Settling Defendants and any person for performance of Joint or
10 Vadose Zone Work on or relating to the Site, including, but not
11 limited to, claims on account of construction delays. The
12 requirements of this Section apply separately to the Joint Work
13 and to each area of Vadose Zone Work identified in Appendix B.2-
14 B.3, B.5-B.10.

15 56. No later than 15 days before commencing any on-site Joint
16 or Vadose Zone Work, the appropriate Settling Defendants shall
17 secure, and shall maintain until the first anniversary of EPA's
18 ~~Certification of Completion of the Joint Remedial Action or area-~~
19 specific Vadose Zone Work pursuant to Paragraph 46.b. of Section
20 XV (Certification of Completion), comprehensive general liability
21 insurance and automobile insurance with limits of three million
22 dollars (\$3,000,000.00), combined single limit naming as
23 additional insured the United States. In addition, for the
24 duration of this Consent Decree, Settling Defendants shall
25 satisfy, or shall ensure that their contractors or subcontractors
26 satisfy, all applicable laws and regulations regarding the
27 provision of worker's compensation insurance for all persons
28 performing the Joint or Vadose Zone Work on behalf of Settling

1 Defendants in furtherance of this Consent Decree. Prior to
2 commencement of the Joint or Vadose Zone Work under this Consent
3 Decree, Settling Defendants shall provide to EPA certificates of
4 such insurance and a copy of each insurance policy. Settling
5 Defendants shall resubmit such certificates and, if requested by
6 EPA, copies of policies each year on the anniversary of the
7 effective date of this Consent Decree. If Settling Defendants
8 demonstrate by evidence satisfactory to EPA that any contractor
9 or subcontractor maintains insurance equivalent to that described
10 above, or insurance covering the same risks but in a lesser
11 amount, then, with respect to that contractor or subcontractor,
12 Settling Defendants need provide only that portion of the
13 insurance described above which is not maintained by the
14 contractor or subcontractor. Settling Defendants shall
15 separately comply with the provisions of this Paragraph for Joint
16 Work and for area-specific Vadose Zone Work.

17 XIX. FORCE MAJEURE

18 57. "Force majeure," for purposes of this Consent Decree, is
19 defined as any event arising from causes beyond the control of
20 the Settling Defendants or of any entity controlled by Settling
21 Defendants, including, but not limited to, their contractors and
22 subcontractors, that delays or prevents the performance of any
23 obligation under this Consent Decree despite Settling Defendants'
24 best efforts to fulfill the obligation. The requirement that the
25 Settling Defendants exercise "best efforts to fulfill the
26 obligation" includes using best efforts to anticipate any
27 potential force majeure event and best efforts to address the
28 effects of any potential force majeure event (1) as it is

1 occurring and (2) following the potential force majeure event,
2 such that the delay is minimized to the greatest extent possible.
3 "Force Majeure" does not include financial inability to complete
4 the Joint or Vadose Zone Work or a failure to attain the
5 Performance Standards.

6 58. If any event occurs or has occurred that may delay the
7 performance of any obligation under this Consent Decree, whether
8 or not caused by a force majeure event, the Settling Defendants
9 shall notify orally EPA's Project Coordinator or, in his or her

10 absence, EPA's Alternate Project Coordinator, within 48 hours of
11 when Settling Defendants first knew or should have known that the
12 event might cause a delay. Within five [5] days thereafter,
13 Settling Defendants shall provide in writing to EPA and the State
14 an explanation and description of the reasons for the delay; the
15 anticipated duration of the delay; all actions taken or to be
16 taken to prevent or minimize the delay; a schedule for
17 implementation of any measures to be taken to prevent or mitigate
18 the delay or the effect of the delay; the Settling Defendants'

19 rationale for attributing such delay to a force majeure event if
20 they intend to assert such a claim; and a statement as to
21 whether, in the opinion of the Settling Defendants, such event
22 may cause or contribute to an endangerment to public health,
23 welfare or the environment. The Settling Defendants shall
24 include with any notice all available documentation supporting
25 their claim that the delay was attributable to a force majeure.
26 Failure to comply with the above requirements shall preclude
27 Settling Defendants from asserting any claim of force majeure for
28 that event. Settling Defendants shall be deemed to have notice

1 of any circumstance of which their contractors or subcontractors
2 had or should have had notice.

3 59. If EPA agrees that the delay or anticipated delay is
4 attributable to a force majeure event, the time for performance
5 of the obligations under this Consent Decree that are affected by
6 the force majeure event will be extended by EPA for such time as
7 is necessary to complete those obligations. An extension of the
8 time for performance of the obligations affected by the force
9 majeure event shall not, of itself, extend the time for

10 performance of any other obligation. If EPA does not agree that
11 the delay or anticipated delay has been or will be caused by a
12 force majeure event, EPA will notify the Settling Defendants in
13 writing of its decision. If EPA agrees that the delay is
14 attributable to a force majeure event, EPA will notify the
15 Settling Defendants in writing of the length of the extension, if
16 any, for performance of the obligations affected by the force
17 majeure event.

18 60. If the Settling Defendants elect to invoke the dispute
19 resolution procedures set forth in Section XX (Dispute
20 Resolution), they shall do so no later than 15 days after receipt
21 of EPA's notice. In any such proceeding, Settling Defendants
22 shall have the burden of demonstrating by a preponderance of the
23 evidence that the delay or anticipated delay has been or will be
24 caused by a force majeure event, that the duration of the delay
25 or the extension sought was or will be warranted under the
26 circumstances, that best efforts were exercised to avoid and
27 mitigate the effects of the delay, and that Settling Defendants
28 complied with the requirements of Paragraphs 57 and 58, above.

1 If Settling Defendants carry this burden, the delay at issue
2 shall be deemed not to be a violation by Settling Defendants of
3 the affected obligation of this Consent Decree identified to EPA
4 and the Court.

5 **XX. DISPUTE RESOLUTION**

6 61. Unless otherwise expressly provided for in this Consent
7 Decree, the dispute resolution procedures of this Section shall
8 be the exclusive mechanism to resolve disputes arising under or
9 with respect to this Consent Decree. However, the procedures set
10 forth in this Section shall not apply to actions by the United

11 States to enforce obligations of the Settling Defendants that
12 have not been disputed in accordance with this Section.

13 62. Any dispute which arises under or with respect to this
14 Consent Decree shall in the first instance be the subject of
15 informal negotiations between the parties to the dispute. The
16 period for informal negotiations shall not exceed 20 days from
17 the time the dispute arises, unless it is modified by written
18 agreement of the parties to the dispute. The dispute shall be
19 considered to have arisen when one party sends the other parties
20 a written Notice of Dispute.

21 63. a. In the event that the parties cannot resolve a dispute
22 by informal negotiations under the preceding Paragraph, then the
23 position advanced by EPA shall be considered binding unless,
24 within 10 days after the conclusion of the informal negotiation
25 period, Settling Defendants invoke the formal dispute resolution
26 procedures of this Section by serving on the United States a
27 written Statement of Position on the matter in dispute,
28 including, but not limited to, any factual data, analysis or

1 opinion supporting that position and any supporting documentation
2 relied upon by the Settling Defendants. The Statement of
3 Position shall specify the Settling Defendants' position as to
4 whether formal dispute resolution should proceed under paragraph
5 64 or 65.

6 b. Within fourteen (14) days after receipt of Settling
7 Defendants' Statement of Position, EPA will serve on Settling
8 Defendants its Statement of Position, including, but not limited
9 to, any factual data, analysis, or opinion supporting that
10 position and all supporting documentation relied upon by EPA.

11 EPA's Statement of Position shall include a statement as to
12 whether formal dispute resolution should proceed under Paragraph
13 64 or 65.

14 c. If there is disagreement between EPA and the Settling
15 Defendants as to whether dispute resolution should proceed under
16 Paragraph 64 or 65, the parties to the dispute shall follow the
17 procedures set forth in the paragraph determined by EPA to be
18 applicable. However, if the Settling Defendants ultimately
19 ~~appeal to the court to resolve the dispute, the Court shall~~

20 determine which paragraph is applicable in accordance with the
21 standards of applicability set forth in Paragraphs 64 or 65.

22 64. Formal dispute resolution for disputes pertaining to the
23 selection or adequacy of any response action and any other
24 disputes that are accorded review on the administrative record
25 under applicable principles of administrative law shall be
26 conducted pursuant to the procedures set forth in this Paragraph.
27 For purposes of this Paragraph, the adequacy of any response
28 action includes, without limitation: (1) the adequacy or

1 appropriateness of plans, procedures to implement plans, or any
2 other items requiring approval by EPA under this Consent Decree;
3 and (2) the adequacy of the performance of response actions taken
4 pursuant to this Consent Decree. Nothing in this Consent Decree
5 shall be construed to allow any dispute by Settling Defendants
6 regarding the validity of the ROD's provisions.

7 a. An administrative record of the dispute shall be
8 maintained by EPA and shall contain the written notification of
9 such dispute, all statements of position, including supporting
10 documentation, submitted pursuant to this Paragraph. Where
11 appropriate, EPA may allow submission of supplemental documents
12 and/or statements of position by the parties to the dispute.

13 b. The Director of the Hazardous Waste Management
14 Division, EPA Region 9, will issue a final administrative
15 decision resolving the dispute based on the administrative record
16 described in Paragraph 64.a. This decision shall be binding upon
17 the Settling Defendants, subject only to the right to seek
18 judicial review pursuant to Paragraphs 64.c. and d.

19 c. Any administrative decision made by EPA pursuant to
20 Paragraph 64.b. shall be reviewable by this Court, provided that
21 a notice of judicial appeal is filed by the Settling Defendants
22 with the Court and served on all Parties within 10 days of
23 receipt of EPA's decision. The notice of judicial appeal shall
24 include a description of the matter in dispute, the efforts made
25 by the parties to resolve it, the relief requested, and the
26 schedule, if any, within which the dispute must be resolved to
27 ensure orderly implementation of this Consent Decree. The United
28

1 States may file a response to Settling Defendants' notice of
2 judicial appeal.

3 d. In proceedings on any dispute governed by this
4 Paragraph, Settling Defendants shall have the burden of
5 demonstrating that the decision of the Director of the Hazardous
6 Waste Management Division is arbitrary and capricious or
7 otherwise not in accordance with law. Judicial review of EPA's
8 decision shall be on the administrative record compiled pursuant
9 to Paragraph 64.a.

10 65. Formal dispute resolution for disputes that neither
11 pertain to the selection or adequacy of any response action nor
12 are otherwise accorded review on the administrative record under
13 applicable principles of administrative law shall be governed by
14 this Paragraph.

15 a. Following receipt of Settling Defendants' Statement of
16 Position submitted pursuant to Paragraph 63, the Director of the
17 Hazardous Waste Management Division, EPA Region 9, will issue a
18 final decision resolving the dispute. The Hazardous Waste
19 Management Division Director's decision shall be binding on the
20 Settling Defendants unless, within 10 days of receipt of the
21 decision, the Settling Defendants file with the Court and serve
22 on the parties a notice of judicial appeal setting forth the
23 matter in dispute, the efforts made by the parties to resolve it,
24 the relief requested, and the schedule, if any, within which the
25 dispute must be resolved to ensure orderly implementation of the
26 Consent Decree. The United States may file a response to
27 Settling Defendants' notice of judicial appeal.

1 b. Notwithstanding Paragraph J of Section I (Background)
2 of this Consent Decree, judicial review of any dispute governed
3 by this Paragraph shall be governed by applicable provisions of
4 law.

5 66. The invocation of formal dispute resolution procedures
6 under this Section shall not extend, postpone or affect in any
7 way any obligation of the Settling Defendants under this Consent
8 Decree not directly in dispute, unless EPA or the Court agrees
9 otherwise. Stipulated penalties with respect to the disputed
10 matter shall continue to accrue but payment shall be stayed
11 pending resolution of the dispute as provided in Paragraph 74.
12 Notwithstanding the stay of payment, stipulated penalties shall
13 accrue from the first day of noncompliance with any applicable
14 provision of this Consent Decree. In the event that the Settling
15 Defendant does not prevail on the disputed issue, stipulated
16 penalties shall be assessed and paid as provided in Section XXI
17 (Stipulated Penalties).

18 XXI. STIPULATED PENALTIES

19 67. Settling Defendants shall be liable for stipulated
20 penalties in the amounts set forth in Paragraph 68.a-d to the
21 United States for failure to comply with the requirements of this
22 Consent Decree specified below, unless excused under Section XIX
23 (Force Majeure). "Compliance" by Settling Defendants shall
24 include completion of the activities under this Consent Decree or
25 any plan approved under this Consent Decree identified below in
26 accordance with all applicable requirements of law, this Consent
27 Decree, the SOWs, and any plans or other documents approved by
28 EPA pursuant to this Consent Decree and within the specified time

schedules established by and approved under this Consent Decree. Settling Defendants shall be jointly and severally liable for any stipulated penalties pursuant to the provisions of this Section with respect to the Joint Work, provided, that the total amount due and payable for each day of each violation shall not exceed those limits specified in this Section. Settling Defendants required to conduct area-specific Vadose Zone Work under this Decree shall be solely responsible (or, where applicable, jointly and severally responsible with other Settling Defendants required to conduct the same area-specific Vadose Zone Work) for stipulated penalties assessed with respect to such area-specific Vadose Zone Work.

68. a. The following stipulated penalties shall be payable per violation per day to the United States for any failure to timely or adequately complete the reports identified in Subparagraph b:

<u>Penalty Per Violation</u> <u>Per Day</u>	<u>Period of Noncompliance</u>
\$5,000	First through 14th calendar day
\$7,500	15th through 30th calendar day
\$20,000	31st calendar day and beyond

b. For Joint Work: Area A Monitoring Well Installation Summary Report; Area B Monitoring Well Installation Summary Report; Area C Monitoring Well Installation Summary Report; Phase II Proposal for Additional Monitoring Wells.

For Vadose Zone Work: Vadose Zone Investigation and Ground-Water Threat Estimate Calculations Report; SVE System Design.

c. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance with the requirements of this Consent Decree concerning all other reports, plans, data gathering and well installation activities, or for any other violations of this Consent Decree, including but not limited to, all implementation schedules and performance submission dates:

Penalty Per Violation
Per Day

Period of Noncompliance

\$1,000

First through 7th calendar day

\$3,000

8th through 14th calendar day

\$10,000

15th through 30th calendar day

\$15,000

31st calendar day and beyond

d. In the event that EPA assumes performance of a portion or all of the Joint or Vadose Zone Work pursuant to Paragraph 81 of Section XXII (Covenants Not to Sue by Plaintiffs), Settling Defendants who are responsible for performance of such Joint or area-specific Vadose Zone Work shall be liable for a stipulated ~~penalty equal to the lesser of one million dollars~~

(\$1,000,000.00) or two times the response costs incurred to perform such Joint or area-specific Vadose Zone Work, plus interest.

e. Each Cash Defendant shall be liable to the United States for stipulated penalties for (1) failure to grant access in accordance with Section X.26.a (Access); or (2) a violation of Section XXVI (Retention of Records). The Stipulated penalty for any violation under (1) or (2) of the preceding sentence shall be five hundred dollars (\$500) per day. Payments shall be made in

1 accordance with the procedure set forth in Paragraph 71 of this
2 Consent Decree. The provisions of Section XX (Dispute
3 Resolution) shall apply to any dispute between EPA and Cash
4 Defendant(s) over whether a violation has occurred under (1) or
5 (2) of this Subparagraph.

6 69. All penalties shall begin to accrue on the day after the
7 complete performance is due or the day a violation occurs, and
8 shall continue to accrue through the final day of the correction
9 of the noncompliance or completion of the activity. Nothing

10 herein shall prevent the simultaneous accrual of separate
11 penalties for separate violations of this Consent Decree.

12 70. Following EPA's determination that Settling Defendants
13 have failed to comply with a requirement of this Consent Decree,
14 or that Cash Defendant(s) have failed to comply with a
15 requirement of this Consent Decree as described in Paragraph
16 68.e, EPA may give Settling or Cash Defendants written
17 notification of the same and describe the noncompliance. EPA may
18 send the Settling or Cash Defendants a written demand for the
19 payment of the penalties. However, penalties shall accrue as
20 provided in the preceding Paragraph regardless of whether EPA has
21 notified the Settling or Cash Defendants of a violation.

22 71. All penalties owed to the United States under this
23 section shall be due and payable within 30 days of the
24 Defendant(s)('s) receipt from EPA of a demand for payment of the
25 penalties, unless Defendant(s) invoke the Dispute Resolution
26 procedures under Section XX (Dispute Resolution). All payments
27 under this Section shall be paid by certified check made payable
28 to "EPA Hazardous Substances Superfund," shall be mailed to U.S.

1 Environmental Protection Agency, Region 9, Superfund Accounting,
2 P.O. Box 360863M, Pittsburgh, PA 15251, and shall reference
3 CERCLA Site Number provided by EPA and DOJ Case Number 90-11-2-
4 413B. Copies of check(s) paid pursuant to this Section, and any
5 accompanying transmittal letter(s), shall be sent to the United
6 States as provided in Section XXVII (Notices and Submissions).

7 72. The payment of penalties shall not alter in any way
8 Settling Defendants' obligation to complete the performance of
9 the Joint or Vadose Zone Work required under this Consent Decree.

10 73. Penalties shall continue to accrue as provided in
11 Paragraph 70 during any dispute resolution period, but need not
12 be paid until the following:

13 a. If the dispute is resolved by agreement or by a
14 decision of EPA that is not appealed to this Court (including any
15 dispute regarding an EPA-assumption-of-work penalty), accrued
16 penalties determined to be owing shall be paid to EPA within 15
17 days of the agreement or the receipt of EPA's decision or order;

18 b. If the dispute is appealed to this Court and the United
19 States prevails in whole or in part, Defendant(s) shall pay all
20 accrued penalties determined by the Court to be owed to EPA
21 within 60 days of receipt of the Court's decision or order,
22 except as provided in Subparagraph c below;

23 c. If the Court's decision is appealed by any Party,
24 Defendant(s) shall pay all accrued penalties determined by the
25 Court to be owing to the United States into an interest-bearing
26 escrow account within 60 days of receipt of the Court's decision
27 or order. Penalties shall be paid into this account as they
28 continue to accrue, at least every 60 days. Within 15 days of

1 receipt of the final appellate court decision, the escrow agent
2 shall pay the balance of the account to EPA or to Defendant(s) to
3 the extent that they(it) prevail(s).

4 74. a. If Defendant(s) fail to pay stipulated penalties when
5 due, the United States may institute proceedings to collect the
6 penalties, as well as interest. Defendant(s) shall pay interest
7 on the unpaid balance, which shall begin to accrue on the date of
8 demand made pursuant to Paragraph 71 at the rate established
9 pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

10 b. The stipulated penalties established in this Consent
11 Decree shall be the exclusive mechanism for the assessment and
12 collection of penalties for noncompliance with the provisions
13 subject to stipulated penalties, unless EPA elects, in lieu of
14 demanding such stipulated penalties, to seek civil penalties
15 under CERCLA.

16 75. No payments made under this Section shall be tax
17 deductible for Federal or State tax purposes.

18 ~~XXII. COVENANTS NOT TO SUE BY PLAINTIFF~~

19 76. a. In consideration of the actions that will be performed
20 and the payments that will be made by the Settling Defendants
21 under the terms of this Consent Decree, and except as
22 specifically provided in Paragraphs 77, 78, and 80 of this
23 Section, the United States covenants not to sue or to take
24 administrative action against Settling Defendants pursuant to
25 Sections 106 and 107(a) of CERCLA, and Section 7003 of RCRA for
26 performance of the Joint or Vadose Zone Work and for recovery of
27 Past Response Costs and Future Response Costs. These covenants
28 not to sue shall take effect upon the receipt by EPA of the

1 payments required by Paragraph 50 of Section XVII (Reimbursement
2 of Response Costs). These covenants not to sue are conditioned
3 upon the complete and satisfactory performance by Settling
4 Defendants of their obligations under this Consent Decree. These
5 covenants not to sue extend only to the Settling Defendants and
6 do not extend to any other person.

7 b. In consideration of the actions that will be performed
8 and the payments that will be made by the Settling Defendants
9 ~~under the terms of this Consent Decree and under the terms of the~~
10 SOUCD, the United States covenants not to sue or to take
11 administrative action against Settling Defendants pursuant to
12 Sections 106 and 107(a) of CERCLA, and Section 7003 of RCRA for
13 future liability relating to the Site, except as specifically
14 provided in Paragraphs 77, 78, and 80 and except as specifically
15 provided in Paragraphs C and D of Section XXXI (Covenants Not to
16 Sue and Reservations of Rights) of the SOUCD. These covenants
17 not to sue shall take effect upon Certification of Completion by
18 ~~EPA of Joint Remedial Action and area-specific Vadose Zone Work~~
19 pursuant to Section XV (Certification of Completion), Paragraph
20 46 of this Consent Decree and Certification of Completion of
21 Remedial Action pursuant to Section XXXIX (Termination and
22 Satisfaction), Paragraph B of the SOUCD. These covenants not to
23 sue are conditioned upon the complete and satisfactory
24 performance by Settling Defendants of their obligations under
25 this Consent Decree and the SOUCD, including achieving ARARs and
26 other criteria in the MAU and LAU as required in Appendix A of
27 the ROD. These covenants not to sue extend only to the Settling
28 Defendants and do not extend to any other person.

1 c. In consideration of payments made under the terms of
2 Subparagraph 50.b of Section XVII (Reimbursement of Response
3 Costs) and access provided pursuant to Paragraph 26 of Section X
4 (Access) by Cash Defendants, and except as specifically provided
5 in Paragraphs 77, 78 and 80 of this Section, the United States
6 covenants not to sue or take administrative action against Cash
7 Defendants pursuant to Sections 106 and 107(a) of CERCLA, and
8 Section 7003 of RCRA for performance of the Joint and/or Vadosé
9 Zone Work and for recovery of Past Response Costs and Future
10 Response Costs. These covenants not to sue shall take effect
11 upon entry of the Consent Decree by the Court. These covenants
12 not to sue are conditioned upon the complete and satisfactory
13 performance by Cash Defendants of their obligations under this
14 Consent Decree. These covenants not to sue extend only to the
15 Cash Defendants as defined in Section IV (Definitions) and do not
16 extend to any other person.

17 d. In consideration of the payments made under the terms of
18 ~~Subparagraph 50.b of Section XVII (Reimbursement of Response~~
19 Costs) and access provided pursuant to Paragraph 26 of Section X
20 (Access) by Cash Defendants under the terms of this Consent
21 Decree, the United States covenants not to sue or to take
22 administrative action against Cash Defendants pursuant to
23 Sections 106 and 107(a) of CERCLA, and Section 7003 of RCRA for
24 future liability relating to the Site, except as specifically
25 provided in Paragraphs 77, 78, and 80 and except as specifically
26 provided in Paragraphs C and D of Section XXXI (Covenants Not to
27 Sue and Reservations of Rights) of the SOUCD. These covenants
28 not to sue shall take effect upon Certification of Completion by

1 EPA of Joint Remedial Action and area-specific Vadose Zone Work
2 pursuant to Section XV (Certification of Completion), Paragraph
3 46 of this Consent Decree and Certification of Completion of
4 Remedial Action pursuant to Section XXXIX (Termination and
5 Satisfaction), Paragraph B of the SOUCD. These covenants not to
6 sue are conditioned upon the complete and satisfactory
7 performance by Cash Defendants of their obligations under this
8 ~~Consent Decree. These covenants not to sue extend only to the~~
9 Cash Defendants and do not extend to any other person.

10 77. Plaintiff's Pre-certification reservations.

11 Notwithstanding any other provision of this Consent Decree, the
12 United States reserves, and this Consent Decree is without
13 prejudice to, the right to institute proceedings in this action
14 or in a new action, or to issue an administrative order seeking
15 to compel Defendants (1) to perform further response actions
16 relating to the Site or (2) to reimburse the United States for
17 additional costs of response if, prior to certification of
18 completion of the Joint Remedial Action or prior to certification
19 of the Vadose Zone Work for each specific area:

20 (i) conditions at the Site, previously unknown to EPA,
21 are discovered, or

22 (ii) information, previously unknown to EPA, is received,
23 in whole or in part,

24 and these previously unknown conditions or information together
25 with any other relevant information indicates that the Joint
26 Remedial Action or Vadose Zone Work is not protective of human
27 health or the environment.
28

1 78. Plaintiff's Post-certification reservations.

2 Notwithstanding any other provision of this Consent Decree, the
3 United States reserves, and this Consent Decree is without
4 prejudice to, the right to institute proceedings in this action
5 or in a new action, or to issue an administrative order seeking
6 to compel Defendants (1) to perform further response actions
7 relating to the Site or (2) to reimburse the United States for
8 additional costs of response if, subsequent to certification of
9 completion of the Joint Remedial Action or the Vadose Zone Work
10 for each specific area:

11 (i) conditions at the Site, previously unknown to EPA,
12 are discovered, or
13 (ii) information, previously unknown to EPA, is received,
14 in whole or in part,
15 and these previously unknown conditions or this information
16 together with other relevant information indicate that the Joint
17 Remedial Action or Vadose Zone Work is not protective of human
18 health or the environment.

19 79. For purposes of Paragraph 77, the information and the
20 conditions known to EPA shall include only that information and
21 those conditions set forth in the Record of Decision for the Site
22 and the administrative record supporting the Record of Decision.
23 For purposes of Paragraph 78, the information previously received
24 by and the conditions known to EPA shall include only that
25 information and those conditions set forth in the Record of
26 Decision, the administrative record supporting the Record of
27 Decision, and any information received by EPA pursuant to the
28 requirements of this Consent Decree prior to Certification of

1 Completion of the Joint Remedial Action or Vadose Zone Work for
2 each specific area.

3 80. General reservations of rights. The covenants not to sue
4 set forth above do not pertain to any matters other than those
5 expressly specified in Paragraph 76. The United States reserves,
6 and this Consent Decree is without prejudice to, all rights
7 against Defendants with respect to all other matters, including
8 but not limited to, the following:

9 (1) claims based on a failure by Defendants to meet a
10 requirement of this Consent Decree;

11 (2) liability arising from the past, present, or future
12 disposal, release, or threat of release of Waste Materials
13 outside of the Site;

14 (3) liability for damages for injury to, destruction of,
15 or loss of natural resources;

16 (4) liability for response costs that have been or may be
17 incurred by any federal agencies which are trustees for
18 natural resources and which have, or may in the future, spend
19 funds relating to the Site;

20 (5) criminal liability;

21 (6) liability for violations of federal or state law which
22 occur during or after implementation of the Joint Remedial
23 Action or Vadose Zone Work; and

24 (7) liability for costs that the United States will incur
25 related to the Site but are not within the definition of
26 Future Response Costs.

27 81. a. In the event EPA determines that Settling Defendants
28 have failed to implement any provisions of the Joint or Vadose

1 Zone Work in an adequate or timely manner, EPA may perform any
2 and all portions of the Joint or Vadose Zone Work as EPA
3 determines necessary. Settling Defendants may invoke the
4 procedures set forth in Section XX (Dispute Resolution) to
5 dispute EPA's determination that the Settling Defendants failed
6 to implement a provision of the Joint or Vadose Zone Work in an
7 adequate or timely manner as arbitrary and capricious or
8 otherwise not in accordance with law. Such dispute shall be
9 resolved on the administrative record. Costs incurred by the
10 United States in performing the Joint or Vadose Zone Work
11 pursuant to this Paragraph shall be considered Future Response
12 Costs that Settling Defendants shall pay pursuant to Section XVII
13 (Reimbursement of Response Costs).

14 b. If EPA determines in the event of an imminent and
15 substantial endangerment related to the Site, that it will take
16 over performance of the Joint Remedial Action or any area-
17 specific Vadose Zone Work or any portion thereof, to the extent
18 practicable, EPA will provide notice to Settling Defendants and
19 an opportunity to perform any affected portions of the Joint
20 Remedial Action or area-specific Vadose Zone Work. If EPA
21 determines that it will take over performance of the Joint
22 Remedial Action or area-specific Vadose Zone Work or any portion
23 thereof under this Paragraph for any reason other than an
24 imminent and substantial endangerment, EPA will provide notice to
25 Settling Defendants regarding their performance of the Joint
26 Remedial Action or area-specific Vadose Zone Work which is
27 prompting EPA to take over such work. EPA will also, after
28 consultation with Settling Defendants, provide Settling

1 Defendants a schedule setting forth the time within which
2 Settling Defendants shall have the opportunity to cure the
3 deficiency. The provisions of Section XXI (Stipulated Penalties)
4 shall apply to any work performed by Settling Defendants under
5 this Paragraph.

6 82. Notwithstanding any other provision of this Consent
7 Decree, the United States retains all authority and reserves all
8 rights to take any and all response actions authorized by law.

9 XXIII. COVENANTS BY DEFENDANTS

10 83. Defendants hereby covenant not to sue and agree not to
11 assert any claims or causes of action against the United States
12 with respect to the Site or this Consent Decree, including, but
13 not limited to, any direct or indirect claim for reimbursement
14 from the Hazardous Substance Superfund (established pursuant to
15 the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA
16 Sections 106(b)(2), 111, 112, 113 or any other provision of law,
17 or any claims arising out of response activities at the Site.
18 However, the Defendants reserve, and this Consent Decree is
19 without prejudice to, actions against the United States based on
20 negligent actions taken directly by the United States (not
21 including oversight or approval of the Settling Defendants plans
22 or activities) that are brought pursuant to any statute other
23 than CERCLA and for which the waiver of sovereign immunity is
24 found in a statute other than CERCLA. Nothing in this Consent
25 Decree shall be deemed to constitute preauthorization of a claim
26 within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or
27 40 C.F.R. § 300.700(d).

1 XXIV. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

2 84. Nothing in this Consent Decree shall be construed to
3 create any rights in, or grant any cause of action to, any person
4 not a party to this Consent Decree. The preceding sentence shall
5 not be construed to waive or nullify any rights that any person
6 not a signatory to this Decree may have under applicable law.
7 Each of the Parties expressly reserves any and all rights
8 (including, but not limited to, any right to contribution),
9 defenses, claims, demands, and causes of action which each party
10 may have with respect to any matter, transaction, or occurrence
11 relating in any way to the Site against any person not a party
12 hereto.

13 85. With regard to claims for contribution against Defendants
14 for matters addressed in this Consent Decree, the Parties hereto
15 agree that the Defendants are entitled to such protection from
16 contribution actions or claims as is provided by CERCLA Section
17 113(f)(2), 42 U.S.C. § 9613(f)(2).

18 86. The Defendants agree that with respect to any suit or
19 claim for contribution brought by them for matters related to
20 this Consent Decree they will notify the United States in writing
21 no later than 60 days prior to the initiation of such suit or
22 claim.

23 87. The Defendants also agree that with respect to any suit
24 or claim for contribution brought against them for matters
25 related to this Consent Decree they will notify in writing the
26 United States and the State within 20 days of service of the
27 complaint on them. In addition, Defendants shall notify the
28 United States and the State within 20 days of service or receipt

1 of any Motion for Summary Judgment and within 20 days of receipt
2 of any order from a court setting a case for trial.

3 88. In any subsequent administrative or judicial proceeding
4 initiated by the United States for injunctive relief, recovery of
5 response costs, or other appropriate relief relating to the Site,
6 Defendants shall not assert, and may not maintain, any defense or
7 claim based upon the principles of waiver, res judicata,
8 collateral estoppel, issue preclusion, claim-splitting, or other
9 defenses based upon any contention that the claims raised by the
10 United States in the subsequent proceeding were or should have

11 been brought in the instant case; provided, however, that nothing
12 in this Paragraph affects the enforceability of the covenants not
13 to sue set forth in Section XXII (Covenants Not to Sue by
14 Plaintiff).

15 XXV. ACCESS TO INFORMATION

16 89. Settling Defendants shall provide to EPA and the State,
17 upon request by EPA, copies of all documents and information
18 within their possession or control or that of their contractors
19 or agents relating to activities at the Site or to the
20 implementation of this Consent Decree, including, but not limited
21 to, sampling, analysis, chain of custody records, manifests,
22 trucking logs, receipts, reports, sample traffic routing,
23 correspondence, or other documents or information related to the
24 Joint or Vadose Zone Work. Settling Defendants shall also make
25 available to EPA and the State, upon request by EPA, for purposes
26 of investigation, information gathering, or testimony, their
27 employees, agents, or representatives with knowledge of relevant
28

1 facts concerning the performance of the Joint or Vadose Zone
2 Work.

3 90. a. Settling Defendants may assert business
4 confidentiality claims covering part or all of the documents or
5 information submitted to Plaintiffs under this Consent Decree to
6 the extent permitted by and in accordance with Section 104(e)(7)
7 of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).

8 Documents or information determined to be confidential by EPA
9 will be afforded the protection specified in 40 C.F.R. Part 2,
10 Subpart B. If no claim of confidentiality accompanies documents

11 or information when they are submitted to EPA and the State, or
12 if EPA has notified Settling Defendants that the documents or
13 information are not confidential under the standards of Section
14 104(e)(7) of CERCLA, the public may be given access to such
15 documents or information without further notice to Settling
16 Defendants.

17 b. The Settling Defendants may assert that certain
18 documents, records and other information are privileged under the
19 attorney-client privilege or any other privilege recognized by
20 federal law. If the Settling Defendants assert such a privilege

21 in lieu of providing documents, they shall provide the Plaintiffs
22 with the following: (1) the title of the document, record, or
23 information; (2) the date of the document, record, or
24 information; (3) the name and title of the author of the
25 document, record, or information; (4) the name and title of each
26 addressee and recipient; (5) a description of the contents of the
27 document, record, or information; and (6) the privilege asserted
28 by Settling Defendants. However, no documents, reports or other

1 information created or generated pursuant to the requirements of
2 the Consent Decree shall be withheld on the grounds that they are
3 privileged.

4 91. No claim of confidentiality shall be made with respect to
5 any data, including, but not limited to, all sampling,
6 analytical, monitoring, hydrogeologic, scientific, chemical, or
7 engineering data, or any other documents or information
8 evidencing conditions at or around the Site.

9 XXVI. RETENTION OF RECORDS

10 ~~92. Until 10 years after the Defendants' receipt of EPA's~~
11 ~~notification pursuant to Paragraphs 46.b or 47.b of Section XV~~
12 ~~(Certification of Completion) as appropriate for area-specific~~
13 ~~Vadose Zone Work or Joint Work, each Defendant shall preserve and~~
14 ~~retain all records and documents now in its possession or control~~
15 ~~or which come into its possession or control that relate in any~~
16 ~~manner to the performance of the area-specific Vadose Zone Work~~
17 ~~or Joint Work respectively, or liability of any person for~~
18 ~~response actions conducted and to be conducted at the Site,~~
19 ~~regardless of any corporate retention policy to the contrary.~~

20 Until 10 years after the Defendants' receipt of EPA's
21 notification pursuant to Paragraphs 46.b or 47.b of Section XV
22 (Certification of Completion) as appropriate for area-specific
23 Vadose Zone Work or Joint Work, Defendants shall also instruct
24 their contractors and agents to preserve all documents, records,
25 and information of whatever kind, nature or description relating
26 to the performance of such work.

27 93. At the conclusion of this document retention period,
28 Defendants shall notify the United States at least 90 days prior

1 to the destruction of any such records or documents, and, upon
2 request by the United States Defendants shall deliver any such
3 records or documents to EPA. The Defendants may assert that
4 certain documents, records and other information are privileged
5 under the attorney-client privilege or any other privilege
6 recognized by federal law. If the Defendants assert such a
7 privilege, they shall provide the Plaintiff with the following:
8 (1) the title of the document, record, or information; (2) the
9 date of the document, record, or information; (3) the name and
10 title of the author of the document, record, or information; (4)
11 the name and title of each addressee and recipient; (5) a
12 description of the subject of the document, record, or
13 information; and (6) the privilege asserted by Defendants.

14 However, no documents, reports or other information created or
15 generated pursuant to the requirements of the Consent Decree
16 shall be withheld on the grounds that they are privileged.

17 94. Each Defendant hereby certifies, individually, that it
18 has not altered, mutilated, discarded, destroyed or otherwise
19 disposed of any records, documents or other information relating
20 to its potential liability regarding the Site since notification
21 of potential liability by the United States or the State or the
22 filing of suit against it regarding the Site and that it has
23 fully complied with any and all EPA requests for information
24 pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007
25 of RCRA.

XXVII. NOTICES AND SUBMISSIONS

95. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another or to the State, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, and the Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 7611

Washington, D.C. 20044-7611

Re: DJ # 90-11-2-413 B

For express mail only:

10th & Pennsylvania Aves N.W.

Room 1541

Washington, D.C. 20530

Telefax #: (202) 514-0097

Telephone: (202) 514-4114

and

Daniel Opalski

EPA Project Coordinator

United States Environmental Protection Agency

Region 9, H-7-2

75 Hawthorne Street

San Francisco, CA 94105

Telefax #: (415) 744-1917

Telephone: (415) 744-2359

As to the State: ADEQ:

ADWR:

Samir Badri

NIBW Project Coordinator

Arizona Dept. Environmental Quality

3033 North Central Avenue

Phoenix, AZ 85012

Mason Bolitho

Arizona Dept. of Water

Resources

15 South 15th Avenue

Phoenix, AZ 85007

Telefax #: (602) 207-4237

Telephone: (602) 207-4236

Telefax #: (602) 542-1552

Telephone: (602) 256-0506

1 As to the Settling Defendants:
2 As to Salt River Project:
3 Manager, Environmental Services Department (PAB-352)
4 Salt River Project
5 1521 North Project Drive (For express mail)
6 Tempe, AZ 85281 - or -
7 P.O. Box 52025
8 Phoenix, AZ 85072-2025
9
10 Telefax #: (602) 236-3407
11 Telephone: (602) 236-6699
12
13 As to SmithKline Beecham Corporation:
14 Thomas Beggs
15 SmithKline Beecham Pharmaceuticals
16 709 Swedeland Road (For express mail)
17 P.O. Box 1539, L25
18 King of Prussia, PA 19406-0939
19
20 Telefax #: (215) 270-7437
21 Telephone: (215) 270-7402
22
23 As to Siemens Corporation:
24
25 Jeffrey H. Marcus
26 Siemens Components, Inc.
27 186 Wood Avenue South
28 Iselin, NJ 08830
29
30 Telefax #: (908) 632-2818
31 Telephone: (908) 321-8816
32
33 As to the City of Scottsdale:
34
35 Indian Bend Wash Project Coordination
36 Water Resources Department
37 9191 E. San Salvador Drive
38 Scottsdale, AZ 85258
39
40 Telefax #: (602) 391-5615
41 Telephone: (602) 391-5687
42
43 As to Motorola Inc.:
44
45 Donald Netko
46 8201 McDowell Road, S140
47 Scottsdale, Arizona 85252
48
49 Telefax #: (602) 994-6002
50 Telephone: (602) 441-8110
51
52 As to the Cash Defendants:
53
54 As to Rolamech:
55
56 Duncan Highsmith, President
57 Chief Executive Officer
58 The Highsmith Company, Inc.
59 P.O. Box 800
60 W 5527 Highway 106 (For express mail)
61 Fort Atkinson, Wisconsin 53538-0800
62
63 Telefax #: (414) 563-7395
64 Telephone: (414) 563-9571

1 As to Microsemi Corp. - Scottsdale:

2 Mick McKeighan, Vice-President and General Manager
3 Microsemi Corp. - Scottsdale
4 8700 East Thomas Road
5 Scottsdale, AZ 85252

Telefax #: (602) 941-6444
Telephone: (602) 941-6300

5 As to Scottsdale Memorial Hospital:

6 Mary W. Rekate, Esq.
7 Scottsdale Memorial Hospital
8 7400 East Osborn Road
9 Scottsdale, AZ 85251

Telefax #: (602) 481-4989
Telephone: (602) 481-4000

9 As to P.A.G.E.-Layher:

10 Dr. Berthold Koester
11 General Manager, P.A.G.E. Layher
12 4250 East Camelback Road, Suite 120
13 Phoenix, AZ 85018-0414

Telefax #: (602) 840-0476
Telephone: (602) 840-0414

13 As to L.D. Hancock:

14 Mr. Billy Haygood
15 P.O. Box 2203
16 Tupelo, Mississippi 38803

17 XXVIII. EFFECTIVE DATE

18 96. The effective date of this Consent Decree shall be the
19 date upon which this Consent Decree is entered by the Court,
20 except as otherwise provided herein.

21 XXIX. RETENTION OF JURISDICTION

22 97. This Court retains jurisdiction over both the subject
23 matter of this Consent Decree and the Defendants for the duration
24 of the performance of the terms and provisions of this Consent
25 Decree for the purpose of enabling any of the Parties to apply to
26 the Court at any time for such further order, direction, and
27 relief as may be necessary or appropriate for the construction or
28 modification of this Consent Decree, or to effectuate or enforce

1 compliance with its terms, or to resolve disputes in accordance
2 with Section XX (Dispute Resolution) hereof.

3 XXX. APPENDICES

4 98. The following appendices are attached to and incorporated
5 into this Consent Decree:

6 "Appendix A" is the ROD.

7 "Appendix B.2-B.3, B.5-B.10" are the SOWs for the Vadose Zone
8 Work.

9 "Appendix B.11" is the SOW for the Joint Remedial Action.

10 "Appendix C" is the description and/or map of the Site.

11 "Appendix D" is Attachment II to EPA's Special Notice Letter
12 dated September 30, 1991.

13 "Appendix E" is the list of Supervising Contractors for
14 Settling Defendants.

15 XXXI. COMMUNITY RELATIONS

16 99. Settling Defendants shall propose to EPA their
17 participation in the community relations plan to be developed by
18 EPA. EPA will determine the reasonable and appropriate roles for
19 the Settling Defendants under the Plan. Settling Defendants
20 shall also cooperate with EPA in providing information regarding
21 the Joint or Vadose Zone Work to the public. As requested by
22 EPA, Settling Defendants shall participate in the preparation of
23 such information for dissemination to the public and in public
24 meetings which may be held or sponsored by EPA or the State to
25 explain activities at or relating to the Site.

26 XXXII. MODIFICATION

27 100. Schedules specified in this Consent Decree for
28 completion of the Joint or Vadose Zone Work may be modified by

1 agreement of EPA and the Settling Defendants. All such
2 modifications shall be made in writing.

3 101. No material modifications shall be made to the Joint or
4 Vadose Zone Work without written notification to and written
5 approval of the United States, the Settling Defendants, and the
6 Court. Modifications that do not materially alter the Joint or
7 Vadose Zone Work may be made by written agreement between EPA
8 and the Settling Defendants.

9 102. Nothing in this Decree shall be deemed to alter the
10 Court's power to enforce, supervise or approve modifications to
11 this Consent Decree.

12 XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

13 103. This Consent Decree shall be lodged with the Court for a
14 period of not less than thirty (30) days for public notice and
15 comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
16 § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves
17 the right to withdraw or withhold its consent if the comments
18 regarding the Consent Decree disclose facts or considerations
19 which indicate that the Consent Decree is inappropriate,
20 improper, or inadequate. Settling Defendants consent to the
21 entry of this Consent Decree without further notice.

22 104. If for any reason the Court should decline to approve
23 this Consent Decree in the form presented, this agreement is
24 voidable at the sole discretion of any Party and the terms of the
25 agreement may not be used as evidence in any litigation between
26 the Parties.

27 /

28 /

XXXIV. SIGNATORIES/SERVICE

105. Each undersigned representative of a Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

106. Each Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

107. Each Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

108. This Consent Decree may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Motorola, Inc., et al, relating
3 to the NIBW Superfund Site.

4
5 FOR THE UNITED STATES OF AMERICA

6 Date: 11/23/92

Vicki O'Meara
Vicki O'Meara
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611,
Washington, D.C. 20044-7611

11 Date: 10/22/92

Leslie Allen
Leslie Allen
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611,
Washington, D.C. 20044-7611

Linda A. Akers
United States Attorney
District of Arizona

17 Date: _____ By: _____

18 James P. Loss
19 Assistant United States Attorney
4000 United States Courthouse
20 230 North First Avenue
Phoenix, AZ 85025

21 Date: 8.21.92

John W. McGovern
22 Daniel W. McGovern ^{for}
Regional Administrator, Region IX
23 U.S. Environmental Protection
Agency, Region IX
24 75 Hawthorne Street
San Francisco, CA 94105

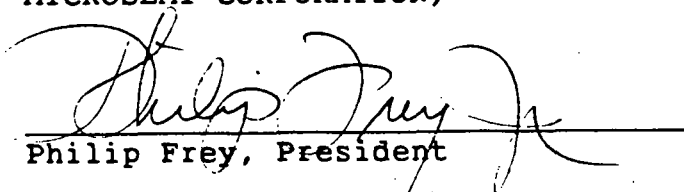
25 Date: 8/21/92

Martha L. Black
26 Martha L. Black
Assistant Regional Counsel RC 3-4
27 U.S. Environmental Protection
Agency, Region IX
28 75 Hawthorne Street,
San Francisco, CA 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in
2 the matter of United States v. Motorola, Inc., et al.,
3 relating to the North Indian Bend Wash Superfund Site.
4

5 Date: 9-18-92

6 FOR MICROSEMI CORP. - SCOTTSDALE,
7 AN ARIZONA CORPORATION (FOR ITSELF
8 AND ITS PARENT CORPORATION,
9 MICROSEMI CORPORATION)
10

11 
Philip Frey, President

12 Microsemi Corporation
13 2830 Fairview Street
14 Santa Ana, California 92704
15

16 Agent Authorized to Accept Service on Behalf of
17 Above-signed Party:
18

19 Mick McKeighan, Vice President and General Manager
20 Microsemi Corp. - Scottsdale
21 8700 East Thomas Road
22 Scottsdale, Arizona 85252
23

24 Telephone Number: (602) 941-6300
25
26
27
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Motorola, Inc., et al, relating to
3 the North Indian Bend Wash ("NIBW") Superfund Site.
4

5 FOR THE HIGHSMITH COMPANY, INC.
6

7 Date: July 29, 1992
8

Duncan Highsmith

Duncan Highsmith, President
Chief Executive Officer
The Highsmith Co., Inc.

P.O. Box 800
W 5527 Highway 106
Fort Atkinson, WI 53538-0800

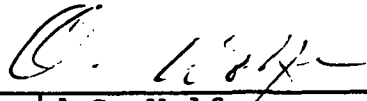
10
11
12 Agent Authorized to Accept Service on Behalf of
13 Above-signed Party:

14 Name: Duncan Highsmith
15 Title: Chief Executive Officer
16 Address: The Highsmith Co., Inc.
P.O. Box 800
W 5527 Highway 106
Fort Atkinson, WI 53538-0800
17 Tel. Number: (414) 563-9571
Fax Number: (414) 563-7395
18

19
20
21
22
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26

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Motorola Inc., et al, relating to the North Indian Bend Wash Superfund Site.

FOR MOTOROLA INC.

Date: 7-29-92 By: 

David G. Wolfe
Vice President and General Manager
8201 East McDowell Road
Scottsdale, Arizona 85252

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Catherine B. McKee
Title: Vice President & Director, Environmental & External Affairs
Address: 8201 East McDowell Road, H3184, Scottsdale, Arizona 85257
Tel. Number: (602) 441-3065

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Motorola Inc., et al, relating to the North Indian Bend Wash Superfund Site.

FOR L.D. HANCOCK COMPANY

Date: 7/30/92

By: [Signature]

Name: _____

Title: _____

Address: _____

FOR L.D. HANCOCK, INDIVIDUALLY

Date: 7/30/92

By: [Signature]

L. D. Hancock

FOR ELAINE HANCOCK, INDIVIDUALLY

Date: 7/30/92

By: [Signature]

Elaine Hancock

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: [Signature]

Title: _____

Address: _____

Tel. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Motorola Inc., et al, relating to the North Indian Bend Wash Superfund Site.

FOR SIEMENS CORPORATION

Date: 30 July 1992

By: Walter G. Gans

Walter G. Gans
Vice President and General Counsel
1301 Avenue of the Americas
New York, N.Y. 10019

Date: 30 July 1992

By: Adrienne D. Whitehead

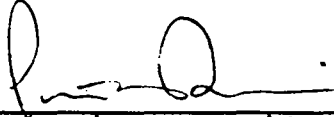
Adrienne D. Whitehead
Secretary & Counsel

Agent Authorized to Accept Service on Behalf of Above-signed Party:

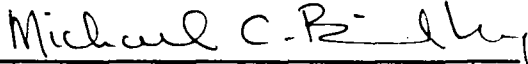
Name: Walter G. Gans
Title: General Counsel
Address: 1301 Avenue of the Americas, New York, NY 10019
Tel. Number: (212) 355-4411

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Motorola Inc., et al, relating to the North Indian Bend Wash Superfund Site.

FOR SCOTTSDALE MEMORIAL HOSPITAL

Date: 31 July 1992 By: 
Peter Frick, President
Scottsdale Memorial Hospital
7400 East Osborn Road
Scottsdale, Arizona 85251

FOR SCOTTSDALE MEMORIAL REALTY CO.

Date: 7-28-92 By: 
Michael C. Brinkley, President
Scottsdale Memorial Realty Co., Inc.
3621 Wells Fargo Avenue
Scottsdale, Arizona 85251

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

STK Service Company
2929 North Central Avenue, 14th Floor
Phoenix, Arizona 85012-2742

Tel. Number: (602) 279-4900

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Motorola Inc., et al, relating to the North Indian Bend Wash Superfund Site.

FOR

SALT RIVER VALLEY WATER USERS' ASSOCIATION
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT

Date:

August 5, 1998

By:

John R. Lassen

JOHN R. LASSEN

President

1521 Project Drive

Tempe, Arizona 85281

ATTEST AND COUNTERSIGN:

William K. O'Neal

William K. O'Neal
Secretary

APPROVED AS TO FORM:

Deborah A. Jamieson

Deborah A. Jamieson
Staff Attorney

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: William K. O'Neal

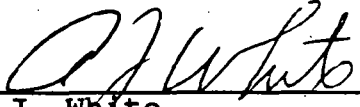
Title: Secretary

Address: 1521 Project Drive Tempe AZ 85281

Tel. Number: 360-2209

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Motorola Inc., et al, relating to the North Indian Bend Wash Superfund Site.

FOR SMITHKLINE BEECHAM CORPORATION
ON BEHALF OF ITSELF AND BECKMAN INSTRUMENTS

Date: August 11, 1992 By: 
Albert J. White
General Counsel - United States

Date: _____ By: _____

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: CT Corp. System
Title: Agent
Address: 1635 Market St., Philadelphia, PA 19103
Tel. Number: (215) 563-7750

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Motorola, Inc., et al, relating to the North Indian Bend Wash Superfund Site.

FOR THE CITY OF SCOTTSDALE, a municipal corporation

Date: 8-12-92 By: *H. R. Drinkwater* ^{for}
Herbert R. Drinkwater, Mayor

ATTEST:

Sonia Robertson
Sonia Robertson, City Clerk

APPROVED AS TO FORM:

Margaret Wilson ^{for}
Richard W. Garnett III, City Attorney

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: Richard W. Garnett III
Title: City Attorney
Address: City of Scottsdale
3939 Civic Center Boulevard
Scottsdale, Arizona 85251
Tel. Number: (602) 994-2405

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Motorola Inc., et al, relating to the North Indian Bend Wash Superfund Site.

FOR P.A.G.E.-LAYHER

Date:

9-8-92

By:

[Signature]

Name: Dr. juris Berthold Koester

Title: General Manager

Address: 4250 E. Camelback Rd., Suite 120K
Phoenix, AZ 85018-0476

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____
Title: _____
Address: _____
Tel. Number: _____